SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-129

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, etc., et al.,

Appellants,

—v.—

NEW YORK, et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

INDEX

Chronological List of Relevant Docket Entries

December 3, 1971—Plaintiff's original complaint filed in the U.S. District Court for the District of Columbia.

December 16, 1971—Plaintiff's amended complaint filed.

March 10, 1972—Defendant's answer filed.

March 17, 1972—Plaintiff's motion for summary judgment filed.

April 4, 1972—Defendant's consent to summary judgment filed.

April 7, 1972—Applicant's motion to intervene filed.

April 12, 1972—Order of the District Court entered, denying motion to intervene and granting motion for summary judgment.

April 24, 1972—Applicant's motion to alter judgment filed.

April 25, 1972—Order of the District Court entered, denying motion to alter judgment.

May 11, 1972—Notice of appeal filed by applicants for intervention.

November 6, 1972—Jurisdiction postponed.

Amended Complaint

(Filed December 16, 1971)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Index No. 2419-71

NEW YORK STATE on behalf of NEW YORK, BRONX and KINGS COUNTIES, political subdivisions of said State,

Plaintiff,

—against—

UNITED STATES OF AMERICA,

Defendant.

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT UNDER THE "VOTING RIGHTS ACT OF 1965" AND THE "VOTING RIGHTS ACT AMENDMENT OF 1970"

1.

This is an action for a declaratory judgment arising under Section 4(a) of the Voting Rights Act of 1965, Public Law 89-110, 70 Stat. 438; 42 U.S.C. § 1973b as amended by Public Law 91-285, 84 Stat. 315, and is brought pursuant to 26 U.S.C. § 2201 for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears.

2.

The plaintiff, New York State, is one of the sovereign states of the United States of America. New York, Bronx

and Kings Counties, are duly constitutional counties of the State of New York; they are political subdivisions of said State within the meaning of that term as used in the foregoing section authorizing actions for declaratory judgment by a state or subdivision thereof.

3.

The State of New York requires certain qualifications for registration and voting. Section 150 of the Election Law, prior to and since 1961, has required that a "new voter except for physical disability", be able to read and write English. Section 168 of the Election Law provides for the giving of literacy tests or for the presentation of evidence of literary in lieu of such test.

4.

Section 168 of the Election Law provides that in lieu of taking a literacy test,

> "(A) new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction or a certificate or diploma showing that he has completed the work up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language. . . ." Election Law § 168 as amended L. 1965, c. 797, eff. July 16, 1965.

After the enactment of the federal "Voting Rights Act of 1965", the New York City Board of Elections provided

English-Spanish affidavits to be executed by new voters in lieu of a diploma or certificate in conformity with the requirements of said Act.

5.

Sections 150 and 168 of the Election Law are statutory enactments of the constitutional requirement for qualification for registration prescribed by Article I, Section 1 of the Constitution of New York, which provides, in pertinent part:

> "Sec. 1. [Qualifications of voters] * * * *, after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English."

The literacy requirement imposed by the New York State Constitution and Sections 150 and 168 of the Election Law have not been held to be violative of the United States Constitution by any Courts.

6.

The literacy tests are made up by the Division of Educational Testing in the State Education Department and are administered by personnel of the Board of Elections during central registration and by examiners designated by the Board of Education of the City of New York during the period of local registration. Several different test types were administered each year and each test was a simplified test to determine literacy with absolutely no intention or effect as a device or test to abridge or deny the right to vote on the basis of race or color.

7.

The literacy requirements described in paragraphs 3 and 4 above were suspended in 1970 and remain suspended pursuant to the mandate in the Voting Rights Act Amendment of 1970 (84 Stat. 315; 42 U.S.C. § 1973, *et seq.*).

8.

By letter to the Governor of the State of New York dated July 16, 1970, the Attorney General of the United States, acting pursuant to the authority conferred by the Congress of the United States in Public Law 89-110, 79 Stat. 437 (Voting Rights Act of 1965), and Public Law 84 Stat. 314 (Voting Rights Act Amendment of 1970), advised of his determination that the provisions of the election laws of New York as hereinabove set forth constituted a "test or device" within the meaning of the Act.

9.

On March 27, 1971, there was published in the Federal Register (36 Fed. Reg. 5809) a determination by the Director of the Bureau of the Census that less than 50 per cent of the persons of voting age residing in Bronx, Kings and New York Counties in the State of New York, voted in the presidential election of 1968.

10.

Upon publication of the aforesaid determination by the Attorney General and the Director of the Census in the Federal Register, the remedial sections of the Voting Rights Act of 1965 and the Voting Rights Act Amendments of 1970 automatically became applicable to the named counties, requiring that all changes in voting qual-

ification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968 be submitted to the Attorney General of the United States.

11.

No test or device within the definition of those terms as used in Section 4(c) of the Voting Rights Act of 1965 or the Voting Rights Act Amendment of 1970, including the tests provided for under Section 168 of the Election Law of New York aforesaid have been used by the plaintiffs during the ten years preceding the filing of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. There have been no final judgments of any court of the United States within ten years preceding the filing of this action determining that denials or abridgements of the right to vote on account of race or color through the use of tests or devices have occurred anywhere within the territory of New York, Bronx or Kings County, in the State of New York.

12.

In 1968, there were 4,445 literacy tests conducted in New York County in which 4,299 persons passed and 146 or 3.3% failed; in Bronx County, 2,396 tests were conducted in which 2,286 persons passed and 110 or 4.8% failed; in Kings County, 3,733 tests were conducted in which 3,560 persons passed and 171 or 4.6% failed. With respect to the results for the literacy tests given for the years 1961 through 1969, see Exhibit "1", annexed hereto.

13.

At the time of the election in November, 1968, there were 630,382 registered voters in New York County; 527,742 registered voters in Bronx County; and 957,880 registered voters in Kings County. In New York County, 553,629 or 87.8% of the registered voters voted in the election; in Bronx County, 465,475 or 88.2% voted; and in Kings County, 810,640 or 84.6% voted.

14.

The percentage of the voting age population who voted for President in 1968 was determined by the Bureau of the Census to be 45.7% in New York County; 47.4% in Bronx County; and 48.4% in Kings County. These percentages were based upon an interpolation from the 1960 and 1970 census establishing a population of 1,159,004 in New York County, 938,482 in Bronx County; and 1,672,151 in Kings County. The percentages were based upon the number of votes cast for President and did not give credit to the persons who voted in the general election, but did not vote for President. Thus in New York County, there were 24,089 unrecorded votes; and in Kings County, 35,573. If these unrecorded votes had been included in the figures used by the Census Bureau, the percentage of voting age population who voted in the 1968 election would be in New York County 47.7%; Bronx County, 49.6%; and Kings County, 48.5%.

15.

Registration is conducted centrally throughout the year in each of the Counties at the office of the Board of Elections. The hours are Monday through Friday from 9 A.M.

to 5 P.M. and Saturday from 9 A.M. to 12 noon. Beginning in 1964 and continuing through 1971, there have been voter registration drives conducted in the summer of every year, except 1967 in each of the named counties designed to increase the number of registered voters. The number of voters registered is set forth in Exhibit "2", annexed hereto. Considerable sums were expended on the registration drives. The central and branch registration was, in addition to the local registration, conducted throughout each county at the regular polling places during the beginning of October of every year.

16.

The failure of any person to register and vote in the Counties of New York, Bronx and Kings is and was in no way related to any purpose or intent on the part of the officials of those counties or the State of New York to deny or abridge the right of any person to vote on account of race or color; the named counties and the State of New York have in the past and will in the future assist and encourage the full participation by all of its citizens in the affairs of government.

WHEREFORE, plaintiff asks for the convening of a three-judge court pursuant to 42 U.S.C. § 1973b(a) and 28 U.S.C. § 2284 and that such court grant a declaratory judgment in this cause adjudicating and declaring that during the ten years preceding the filing of this action, the voter qualifications prescribed by the State of New York, hereinabove referred to have not been used by the Counties of New York, Bronx and Kings, subdivisions of the State of New York, for the purpose or with the effect of denying or abridging the right to vote on account of race or color,

and that the provisions of Sections 4 and 5 of the Voting Rights Act of 1965 as amended by the Voting Rights Act Amendments of 1970 are therefore inapplicable in and to the Counties of New York, Bronx and Kings in the State of New York, and for such other and further relief as to the Court may seem just in the premises.

Dated: New York, New York
December 16, 1971

Louis J. Lefkowitz
Attorney General of the
State of New York
Attorney for Plaintiff
By

.....

John G. Proudfit
Assistant Attorney General
80 Centre Street
New York, New York 10013
Telephone No. 488-3285

Exhibit "1"

Literacy Test Results Since 1961

Year		New York	Bronx	Kings
1961	Total	3607	2404	3502
	Passed	3076	2122	3090
	Failed	531	282	412
1962	Total*	6874	4691	6010
	Passed	6159	4223	5394
	Failed	711	464	616
1963	Total*	7113	4716	7462
	Passed	6277	4086	6644
	Failed	799	619	817
1964	Total*	6265	3977	6400
	Passed	5644	3833	5626
	Failed	621	144	774
1965	Total*	1576	1737	2391
	Passed	1400	1502	2133
	Failed	176	235	258
1966	Total*	1678	1472	2318
	Passed	1505	1297	2086
	Failed	173	175	232
1967	Total*	1381	1016	2002
	Passed	1315	961	1838
	Failed	66	555	164
1968	Total*	4445	2396	3733
	Passed	4299	2286	3560
	Failed	146	110	171
1969*	Total*	1208	1336	2083
	Passed	1149	1232	1926
	Failed	46	103	149

* The slight difference in the total figure is due to tests which were void.

Source: Annual Reports of the Board of Elections of The City of New York.

Exhibit "2"

Branch Registration

	N.Y.	Bronx	Kings
1964	41,646	29,145	38,546

Registration was held in 88 Firehouses throughout entire city of N.Y.

1965	5,014	3,672	2,589

Registration was conducted in 10 Mobile Units throughout entire city of N.Y.

1966	5,773	2,324	3,092

Registration was conducted in 117 Branch officers throughout entire city of N.Y.

1967 No branch registration.

1968	4,091	3,865	7,447

Registration was conducted for 9 days in August at 19 branches in N.Y., 24 branches in the Bronx and 32 branches in Kings.

1969	32,457	14,129	12,891

Registration was conducted for 17 days in August at 60 branches in N.Y., 52 branches in Bronx, and 61 branches in Queens.

Answer

(Filed March 10, 1972)

Civil Action No. 2419-71

[Title Omitted]

Comes now the defendant, United States of America, by and through its attorneys, and answers as follows:

1. The United States admits the allegations of paragraph 1 of the Amendment Complaint, hereinafter referred to as the Complaint.

2. The United States admits the allegations of paragraph 2 of the Complaint.

3. The United States admits the allegations of paragraph 3 of the Complaint.

4. The United States admits the allegation of the first sentence of paragraph 4 of the Complaint. With respect to the allegation in the second sentence of paragraph 4, the United States admits that English-Spanish affidavits were provided by the New York City Board of Elections but, on information and belief, avers that such affidavits were not so provided prior to 1967.

5. The United States admits the allegations of paragraph 5 of the Complaint insofar as the allegations refer to Article II, Section 1 of the Constitution of New York as opposed to the averment in paragraph 5 of the Complaint that said allegations refer to Article I, Section 1 of the Constitution of New York.

6. The United States admits the allegations of the first sentence of paragraph 6 of the Complaint. The United

States admits that portion of the second sentence of paragraph 6 which alleges that several different type tests were administered to determine literacy. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegation that such tests were administered with "absolutely no intention or effect as a device or test to abridge or deny the right to vote on the basis of race or color."

7. The United States admits the allegations of paragraph 7 of the Complaint insofar as it alleges the legal effect of the Voting Rights Act Amendments of 1970 but avers, on information and belief, that the suspension of the literacy requirement was not uniformly implemented.

8. The United States admits the allegations of paragraph 8 of the Complaint.

9. The United States admits the allegations of paragraph 9 of the Complaint.

10. The United States admits the allegations of paragraph 10 of the Complaint.

11. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 11 of the Complaint. The United States admits the allegations of the second sentence of paragraph 11 of the Complaint.

12. The United States admits that the "Annual Reports of the Board of Elections of the City of New York" indicate that the literacy tests referred to in paragraph 12 of the Complaint were administered in New York, Bronx and

Kings Counties for the years 1961 to 1969, but that such figures are incomplete. Answering further the United States avers that the "Annual Reports of the Board of Elections of the City of New York" indicate that the total number of literacy tests administered in New York, Bronx and Kings Counties for the years 1961 to 1969 and the results thereof, including those indicated in paragraph 12 of the Complaint, are set forth in exhibit "1" attached.

13. The United States admits the allegations of paragraph 13 of the Complaint.

14. The United States admits the allegations of paragraph 14 of the Complaint.

15. The United States admits the allegations of paragraph 15 of the Complaint.

16. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint.

/s/ M. KARL SHURTLIFF
GERALD W. JONES
M. KARL SHURTLIFF
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 739-2167

Motion for Summary Judgment
(Filed March 17, 1972)

Index No. 2419-71

[Title Omitted]

SIRS:

PLEASE TAKE NOTICE that upon the complaint and answer herein copies of which are annexed hereto, and upon the annexed affidavit of WINSOR A. LOTT, sworn to December 28, 1971 and the attached exhibits thereto, and upon the annexed affidavit of ALEXANDER BASSETT, sworn to March 16, 1972 and the exhibits attached thereto and upon the affidavit of DARBY M. GUADIA, sworn to March 16, 1972 and the affidavits of BEATRICE BERGER and GUS GALLI, sworn to March 17, 1972 and upon all other proceedings had heretofore, plaintiff will move this Court at a date to be determined by the Court, for an order pursuant to Federal Rules of Civil Procedure, Rule 56(b), granting summary judgment in favor of said plaintiff and for such further and other relief as to the Court seems just and proper.

Dated: New York, New York
March 17, 1972

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Plaintiff
By

/s/ JOHN G. PROUDFIT
JOHN G. PROUDFIT
Assistant Attorney General
80 Centre Street
New York, New York 10013

Affidavit of Alexander Bassett

(Filed March 17, 1972)

(Title Omitted)

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

ALEXANDER BASSETT, being duly sworn, deposes and says:

I am the Administrator for the Board of Elections in the City of New York which includes the counties of New York, Bronx and Kings (as well as Queens and Richmond). I have been employed by the Board of Elections since 1939.

Section 150 and 168 of the Election Law of the State of New York required a "new voter" to present proof of literacy by obtaining and submitting to the Election Inspectors at the time of registration a certificate of literacy issued under the rules and regulations of the Board of Regents of the State of New York to the effect that the voter, to whom it is issued, is able to read and write English, or is able to read and write English save for physical disability only, and to the extent of such physical disability, which shall be stated in the certificate.

Prior to 1965 a "new voter" was allowed to present as evidence of literacy a certificate or diploma showing that he had completed the work of an approved eighth-grade elementary school or of a higher school in which English is the language of instruction or matriculation card issued by a college or a University to a student then at such institution or a certificate or letter signed by an official of the University or college certifying to such attendance. In 1965 Section 168 was amended so that a sixth-grade rather than an eighth-grade education was evidence of lit-

eracy and such education could be in "a public school or a private school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language".

Beginning in the latter part of 1966, to facilitate the provision of the "Voting Rights Act of 1965" that literacy might be in Spanish as well as in English, inspectors of the Board of Elections were instructed to accept affidavits of literacy which were not filled out in their presence. Thus, although the affidavits were in English, the Spanish speaking voters could seek assistance in completing such affidavits. To aid in implementing the provision of the Act which provided for literacy in Spanish, since 1967 the Board of Elections in the City of New York has provided that in lieu of a diploma or certificate as evidence of literacy, a person may execute an English-Spanish affidavit (a copy of the affidavit is annexed hereto as Exhibit 1) and registration is accomplished by the execution of English-Spanish forms.

In accordance with the literacy provisions of the Election Law, the Board of Education of the City of New York designated examiners for the purpose of examining applicants for literacy tests and issuing certificates to those qualified. The literacy tests were administered until 1970 when they were suspended pursuant to the "Voting Rights Act Amendments of 1970". Copies of the Reports of the literacy tests in the Annual Report of the Board of Elections in the City of New York for the years 1961 to 1969 are annexed hereto as Exhibit 2.

Subsequent to the enactment of the Voting Rights Act Amendments of 1970, employees of the Board of Elections were instructed that proof of literacy was no longer required. Any disregarding of this instruction with respect

to the suspension of the literacy requirement, if such occurred would have been an isolated incident and was absolutely unauthorized and in error.

A new instruction in writing will be issued to all employees of the Board of Elections responsible for registration, renewing the direction previously given that absolutely no proof of literacy is necessary as an eligibility requirement for voter registration.

Voter registration is conducted centrally throughout the year in each of the counties comprising New York City at the office of the Central Board of Elections in each such county. During the beginning of October of each year there is local registration conducted, for 3 or 4 days, at the designated polling place for each of the election districts in every county in New York City. (Exhibit 3 annexed hereto indicates the number of voters registered during 1961 through 1971).

At the time the literacy tests were administered during local registration, they were given at schools throughout the city (where the polls were also located in many instances), and were conducted under the supervision of the Board of Education. During the remainder of the year the tests were given at the Board of Education, 110 Livingston Street in Brooklyn, however in 1964, employees of the Board of Elections were authorized to give the tests, so that thereafter they could be administered at the Central Boards, rather than requiring the applicant to go to Brooklyn.

Beginning in 1964 and every year since with the exception of 1967 there have been registration drives conducted in the summer. In 1964 registrations were conducted in firehouses and the following year in Mobil Units, subsequent registration have been conducted in branches

throughout the city. Emphasis during the branch registration was given in particular to areas with highly density black population. Considerable money was expended in conduction of these vote registration drives and in encouraging people to register. (Exhibit 3 annexed hereto).

The Board of Elections has always sought to encourage registration of all qualified citizens in every area of the City. The literacy test has not been used with any purpose or intent to deny or abridge the right of any person to vote on account of race or color. The literacy test, in the absence of other acceptable evidence of literacy, has been utilized by the Board of Elections solely for the purpose of establishing literacy pursuant to the requirements of the New York Election Law.

The foregoing statements are true and correct to the best of my knowledge.

/s/ ALEXANDER BASSETT
ALEXANDER BASSETT

(Sworn to March 16, 1972.)

Affidavit of Winsor A. Lott

(Filed March 17, 1972)

(Title Omitted)

STATE OF NEW YORK,
COUNTY OF ALBANY, *ss.*:

WINSOR A. LOTT, being duly sworn, deposes and says:

I am Chief of the Bureau of Elementary and Secondary Educational Testing of the New York State Education Department. I have been employed by the State Education Department since 1959 and have been involved in the testing field since 1957. I am fully familiar with the New York State Literacy test.

In 1921, New York State adopted a constitutional amendment requiring that all voters must be "able, except for physical disability, to read and write English". Since 1923, the Board of Regents literacy test has been the only authorized test pursuant to the legislative requirements implementing the literacy requirement.

The Regents literacy test is designed to minimize subjective judgment on the part of the examiners. The test consists of a paragraph of 100-150 words written in simple language, followed by eight completion type questions. The questions can be answered in one or two words and are based strictly on what is contained in the paragraph. While the questions are easy, the applicant must be able to understand what he reads in order to answer them correctly. It is not a test of memory, since the applicant can refer to the paragraph while answering the questions.

A number of tests are prepared each year by the Bureau of Elementary and Secondary Educational Testing of the State Education Department. These are administered to a sample of fifth-grade pupils in schools located through-

out the State to insure that the tests are at the proper level of difficulty and to discover any unforeseen problems. From this number, seven tests are selected for final printing and distribution. (Copies of all of the tests and answer keys administered during the years 1961 through 1969 are annexed hereto as Exhibit "1").

The vast majority of the literacy tests are administered to new voters by teachers under the direction of local superintendents of schools. The examiner is required to make few decisions, if any, as to the correctness of the answers given; each examiner is provided with an answer "key". The test is treated as confidential material, and each test and certificate, whether used or not, must be accounted for. (Instructions for administering the test are annexed hereto as Exhibit "2").

The late Frank P. Graves, Commissioner of Education from 1921 to 1940, stated that the literacy tests have been an important incentive for the foreign-born to attend evening classes and "a powerful instrument in the solution of the problem of illiteracy" in New York State. Until the tests were suspended in 1970, more than three million tests had been administered. In recent years, only five percent of the applicants failed their literacy tests.

The test was not intended and has never been constructed so as to discriminate in any way on the basis of race or color. The test is constructed solely to test the literacy of the person being examined.

I have read the above statements which to the best of my knowledge are true and correct.

/s/ WINSOR A. LOTT
WINSOR A. LOTT

(Sworn to December 28, 1971.)

Exhibit Annexed to Foregoing Affidavit

(See Opposite) ☞

Affidavit of Darby M. Gaudia

(Filed March 17, 1972)

71-2419

(Title Omitted)

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

DARBY M. GAUDIA, being duly sworn, deposes and says:

I am the Chief Clerk of the New York Borough Office of the Board of Elections of New York City. I have held this position since April 1967 and I have been employed by the Board of Elections since April 1967. I have examined the affidavit of Alexander Bassett, Administrator of the Board of Elections, submitted in this action, and I can verify from my personal experience that the statements made by Mr. Bassett about voting procedures in New York City are true.

In New York County, prior to 1965, a new voter was allowed to present as evidence of literacy a certificate or diploma showing that he had completed the work of an approved eighth-grade elementary school or of a higher school in which English is the language of instruction, or a matriculation card issued by a college or university to a student who was then at such institution, or a certificate or letter signed by an official of a college or university certifying to such attendance.

In accordance with the provisions of the Voting Rights Act of 1965, employees of the Board of Elections were subsequently advised that proof of literacy was no longer restricted to the English language, and that proof of literacy in Spanish was acceptable. To aid in this change, since 1967 the Board of Elections in New York County has provided that in lieu of a diploma or certificate as evidence

of literacy, a person may execute an English-Spanish affidavit, and registration is accomplished by the execution of English-Spanish forms. The copy of the English-Spanish affidavit that is annexed to Mr. Bassett's affidavit, is the form that was used in New York County.

In addition to central registration at the Board of Elections which occurs continuously throughout the year, there is also local registration at designated polling places in every election district of the County, at the beginning of October of each year. Local registration is always accompanied by publicity in the news media and its manifest purpose is to encourage more citizens in the County to register to vote.

Beginning in 1964 and in every subsequent year except 1967, registration drives have also been held during the summers. In 1964 the registrations were accepted in firehouses, and in 1965 in mobile units. Other registrations have been accepted in branch offices through the County.

In New York County the literacy tests have never been used with a purpose of intent to deny any person the right to vote because of race or color. Indeed, until 1964, the literacy tests were administered to new voters by personnel of the New York City Board of Education, and not by personnel of the Board of Elections. Furthermore, the literacy tests were at all times formulated by the Board of Regents of the New York State Department of Education, and the test questions and answers were standardized so that there was no possibility of the examiners administering the tests in an unfair manner.

Subsequent to the enactment of the Voting Rights Act Amendments of 1970, employees of the Board of Elections were instructed that proof of literacy was no longer required. Any disregarding of the instructions with respect

to the suspension of the literacy requirement, if such occurred, would have been an isolated incident and was absolutely unauthorized and in error.

It has always been the policy of the Borough Office of New York County to encourage all persons to exercise their right to vote. No discrimination on account of race or color has been practiced by the Board of Elections against the citizens of this County.

The foregoing statements are true and correct to the best of my knowledge.

/s/ DARBY M. GAUDIA
DARBY M. GAUDIA
Chief Clerk

(Sworn to March 16, 1972.)

Affidavit of Beatrice Berger

(Filed March 17, 1972)

71-2419

(Title Omitted)

STATE OF NEW YORK,
COUNTY OF BRONX, *ss.*:

BEATRICE BERGER, being duly sworn, deposes and says:

I am the Chief Clerk of the Bronx Borough Office of the Board of Elections of New York City. I have held this position since 1970 and I have been employed by the Board of Elections since 1959. I have examined the affidavit of Alexander Bassett, Administrator of the Board of Elections, submitted in this action, and I can verify from my personal experience that the statements made by Mr. Bassett about voting procedures in New York City are true.

In Bronx County, prior to 1965, a new voter was allowed to present as evidence of literacy a certificate or diploma showing that he had completed the work of an approved eighth-grade elementary school or of a higher school in which English is the language of instruction, or a matriculation card issued by a college or university to a student who was then at such institution, or a certificate or letter signed by an official of a college or university certifying to such attendance.

In accordance with the provisions of the Voting Rights Act of 1965, employees of the Board of Elections were subsequently advised that proof of literacy was no longer restricted to the English language, and that proof of literacy in Spanish was acceptable. To aid in this change, since 1967 the Board of Elections in Bronx County has

provided that in lieu of a diploma or certificate as evidence of literacy, a person may execute an English-Spanish affidavit, and registration is accomplished by the execution of English-Spanish forms. The copy of the English-Spanish affidavit that is annexed to Mr. Bassett's affidavit, is the form that was used in Bronx County.

In addition to central registration at the Board of Elections which occurs continuously throughout the year, there is also local registration at designated polling places in every election district of the County, at the beginning of October of each year. Local registration is always accompanied by publicity in the news media and its manifest purpose is to encourage more citizens in the County to register to vote.

Beginning in 1964 and in every subsequent year except 1967, registration drives have also been held during the summers. In 1964 the registrations were accepted in firehouses, and in 1965 in mobile units. Other registrations have been accepted in branch offices through the County.

In Bronx County the literacy tests have never been used with a purpose of intent to deny any person the right to vote because of race or color. Indeed, until 1964, the literacy tests were administered to new voters by personnel of the New York City Board of Education, and not by personnel of the Board of Elections. Furthermore, the literacy tests were at all times formulated by the Board of Regents of the New York State Department of Education, and the test questions and answers were standardized so that there was no possibility of the examiners administering the tests in an unfair manner.

Subsequent to the enactment of the Voting Rights Act Amendments of 1970, employees of the Board of Elections were instructed that proof of literacy was no longer re-

quired. Any disregarding of the instructions with respect to the suspension of the literacy requirement, if such occurred, would have been an isolated incident and was absolutely unauthorized and in error.

It has always been the policy of the Borough Office of Bronx County to encourage all persons to exercise their right to vote. No discrimination on account of race or color has been practiced by the Board of Elections against the citizens of this County.

The foregoing statements are true and correct to the best of my knowledge.

/s/ BEATRICE BERGER
BEATRICE BERGER
Chief Clerk

(Sworn to March 17, 1972)

Affidavit of Gus Galli

(Filed March 17, 1972)

71-2419

[Title Omitted]

STATE OF NEW YORK,
COUNTY OF KINGS, *ss.:*

GUS GALLI, being duly sworn, deposes and says:

I am the Chief Clerk of the Brooklyn Borough Office of the Board of Elections of New York City. I have held this position since 1966 and I have been employed by the Board of Elections since 1940. I have examined the affidavit of Alexander Bassett, Administrator of the Board of Elections, submitted in this action, and I can verify from my personal experience that the statements made by Mr. Bassett about voting procedures in New York City are true.

In Kings County, prior to 1965, a new voter was allowed to present as evidence of literacy a certificate or diploma showing that he had completed the work of an approved eighth-grade elementary school or of a higher school in which English is the language of instruction, or a matriculation card issued by a college or university to a student who was then at such institution, or a certificate or letter signed by an official of a college or university certifying to such attendance.

In accordance with the provisions of the Voting Rights Act of 1965, employees of the Board of Elections were subsequently advised that proof of literacy was no longer restricted to the English language, and that proof of literacy in Spanish was acceptable. To aid in this change,

since 1967 the Board of Elections in Kings County has provided that in lieu of a diploma or certificate as evidence of literacy, a person may execute an English-Spanish affidavit, and registration is accomplished by the execution of English-Spanish forms. The copy of the English-Spanish affidavit that is annexed to Mr. Bassett's affidavit, is the form that was used in Kings County.

In addition to central registration at the Board of Elections which occurs continuously throughout the year, there is also local registration at designated polling places in every election district of the County, at the beginning of October of each year. Local registration is always accompanied by publicity in the news media and its manifest purpose is to encourage more citizens in the County to register to vote.

Beginning in 1964 and in every subsequent year except 1967, registration drives have also been held during the summers. In 1964 the registrations were accepted in firehouses, and in 1965 in mobile units. Other registrations have been accepted in branch offices through the County.

In Kings County the literacy tests have never been used with a purpose of intent to deny any person the right to vote because of race or color. Indeed, until 1964, the literacy tests were administered to new voters by personnel of the New York City Board of Education, and not by personnel of the Board of Elections. Furthermore, the literacy tests were at all times formulated by the Board of Regents of the New York State Department of Education, and the test questions and answers were standardized so that there was no possibility of the examiners administering the tests in an unfair manner.

Subsequent to the enactment of the Voting Rights Act Amendments of 1970, employees of the Board of Elections

were instructed that proof of literacy was no longer required. Any disregarding of the instructions with respect to the suspension of the literacy requirement, if such occurred, would have been an isolated incident and was absolutely unauthorized and in error.

It has always been the policy of the Borough Office of Kings County to encourage all persons to exercise their right to vote. No discrimination on account of race or color has been practiced by the Board of Elections against the citizens of this County.

The foregoing statements are true and correct to the best of my knowledge.

/s/ GUS GALLI
GUS GALLI
Chief Clerk

(Sworn to March 17, 1972)

Affidavit of Alexander Bassett
(Filed March 31, 1972)

Index No. 2419-71

[Title Omitted]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.:*

ALEXANDER BASSETT, being duly sworn, deposes and says:

I make this affidavit as a supplement to my previous affidavit dated March 16, 1972.

Annexed hereto as Exhibit "1" is a copy of a letter and instructions relating to the suspension of the literacy test, which was received by the Board of Elections from the Secretary of State of the State of New York. Sometime around the beginning of September of 1970, approximately 25,000 copies of the instructions relating to the literacy requirement (annexed hereto as Exhibit "2") were made up and put into the supply boxes that went out to the Election Inspectors in the five counties comprising New York City. In addition, all of those Inspectors who attended instruction classes at the Board of Elections prior to registration in October 1970 were orally instructed that proof of literacy was no longer required. Any Inspector who thereafter required proof of literacy would have been doing so contrary to official policy and instructions.

As stated in my previous affidavit although affidavits printed in Spanish were not available in the Fall of 1966, in order to assist Spanish speaking persons to present proof of literacy, Inspectors were instructed to permit the affidavits concerning proof of literacy which were printed in English, to be filled out outside their presence so that the individual could seek assistance in translation and completion of such affidavit.

/s/ ALEXANDER BASSETT

(Sworn to March 30, 1972)

Exhibits Annexed to Foregoing Affidavit

(Letter dated August 7, 1970)

State of New York
DEPARTMENT OF STATE
162 Washington Avenue
Albany, New York 12225

August 7, 1970

IMPORTANT NOTICE

TO ALL BOARDS OF ELECTIONS

In accordance with the direction of Governor Nelson A. Rockefeller that the 1970 Amendments to the Voting Rights Act be implemented by each Board of Elections throughout New York State, you are hereby instructed accordingly.

In order to maintain the integrity and efficiency of the elective process and to protect fully the franchise of all voters and would-be voters of our state, the following procedures should be put into effect immediately by all election officials charged with the administration of the registration process:

1. On and after August 7, 1970, an applicant for registration, otherwise qualified to vote, must be registered and *no proof nor test of literacy shall be required.* Election personnel conducting central registration and inspectors of election at local registration must register such applicants.

2. After the applicant has been registered and *so advised,* information regarding proof of literacy should be elicited from the applicant, so that whatever the

ultimate decision of the court may be, the registration would continue to be valid.

3. If the applicant for registration fails or refuses to supply proof of literacy, his registration shall nevertheless continue in full force and effect as long as the Voting Rights Act Amendments remain applicable.

4. With respect to new voters who do not establish proof of literacy at the time of registration, a list of the names of such person should be maintained, so that in the event the provision in the Act relating to literacy is declared invalid, the may be afforded an opportunity to meet the literacy requirements of state law.

Beginning the first day of central registration in 1971 (January 4, 1971) and thereafter, all persons, 18 years of age or older, who are otherwise qualified to vote, shall be eligible to register and vote at all primary, special and general elections held on or after January 4, 1971. This includes the right of special enrollment for the 1971 primaries for such new voters pursuant to sections 187 and 388 of the Election Law.

Each Board of Election shall instruct all inspectors of election and other election personnel charged with the responsibility of the registration process, regarding these new provisions of law and to do whatever may be necessary to insure their effective application.

As you may know, court actions have been instituted to test the constitutional validity of the principal provisions of the 1970 Voting Rights Act Amendment. In the event that one or more of the provisions are ultimately held to be invalid, the New York State Constitution and statutes

would govern. However unless this occurs, full effect and compliance must be given to the new provisions of law.

In the near future we will send you additional instructional material to assist new voters and also to serve as a guide to election officials. You may rest assured that you will be advised promptly should anything occur which affects the procedure outlines above.

Any questions regarding the foregoing should be directed to Thomas Wallace, Director of the Election and Law Bureau.

Each election commissioner should acknowledge receipt of this notice by signing and returning to Mr. Wallace the enclosed receipt form.

Sincerely,

/s/ JOHN P. LOMENZO
Secretary of State

Commissioner James M. Power

Exhibits Annexed to Foregoing Affidavit

(Letter dated August 7, 1970)

BOARD OF ELECTIONS

IN

THE CITY OF NEW YORK

August 7, 1970

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Exhibits Annexed to Foregoing Affidavit

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COMMISSIONERS OF ELECTIONS

MAURICE J. O'ROURKE, President
THOMAS MALLEE, Secretary
JAMES M. POWER
J.J. DUBERSTEIN

Memorandum of the United States

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION No. 2419-71

NEW YORK STATE on behalf of NEW YORK, BRONX and KINGS COUNTIES, political subdivisions of said State,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

DEFENDANT'S MEMORANDUM AND AFFIDAVIT IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Based on the facts set forth in the affidavits attached to plaintiff's Motion for Summary Judgment and the reasons set forth in the attached affidavit of David L. Norman, Assistant Attorney General, the United States hereby consents to the entry of a declaratory judgment under Section 4(a) of the Voting Rights Act of 1965 (42 U.S.C. 1973 b(a)).

.....

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

Affidavit of the Assistant Attorney General

(Filed April 3, 1972)

DISTRICT OF COLUMBIA,
CITY OF WASHINGTON,

DAVID L. NORMAN, having been duly sworn, states as follows:

My name is David L. Norman. I am Assistant Attorney General, Civil Rights Division, Department of Justice. I make this affidavit in response to the plaintiff's Motion for Summary Judgment in the case of *New York State* v. *United States of America*, Civil Action No. 2419-71, United States District Court for the District of Columbia. I am familiar with the Complaint filed by the plaintiff and with the Answer filed by the United States herein.

Following the filing of the Complaint, the United States, pursuant to the requirements of Section 4(a) of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973b(a)), undertook to determine if the Attorney General could conclude that he has no reason to believe that the New York State literacy test has been used in the counties of New York, Bronx and Kings during the preceding 10 years for the purpose or with the effect of denying or abridging the right to vote on account of race or color, and thereby consent to the judgment prayed for. At my direction, attorneys from the Department of Justice conducted an investigation which consisted of examination of registration records in selected precincts in each covered county, interviews of certain election and registration officials and interviews of persons familiar with registration activity in black and Puerto Rican neighborhoods in those counties.

Affidavit of the Assistant Attorney General

I have reviewed and evaluated the data obtained through this investigation in light of the statutory guidelines set forth in Section 4(a) and (d) of the Voting Rights Act of 1964 (42 U.S.C. 1973b (a) and (d)). In my judgment the following facts are relevant to the issue of whether the New York literacy test "has been used during the ten years preceding the filing of [this] action for the purpose or with the effect of denying or abridging the right to vote on account of race or color" and to the question of whether the Attorney General should determine "that he has no reason to believe" that the New York literacy test has been used with the proscribed purpose or effect:

1. New York presently has suspended all requirements of literacy as a condition of registration and voting as required by the 1970 Amendments to the Voting Rights Act. Our investigation revealed no allegation by black citizens that the previously enforced literacy test was used to deny or abridge their right to register and vote by reason of race or color.

2. Section 4(e) of the Voting Rights Act of 1965 modified the New York English language literacy requirements by providing that the literacy requirement could be satisfied by proof of attendance through the sixth grade at any American-flag school, including those in Puerto Rico. This Act was passed on August 6, 1965 and was finally upheld by the United States Supreme Court (*Katzenbach* v. *Morgan*, 384 U.S. 641) on June 16, 1966. Our investigation indicated that the implementation of this provision through the use of Spanish language affidavits was not completed until the fall of 1967.

Affidavit of the Assistant Attorney General

The supplemental affidavit of Alexander Bassett dated March 30, 1972, indicates that New York authorities took significant interim steps to minimize any adverse impact resulting from the delay in making available Spanish language affidavits. Our investigation did not reveal any individual citizens whose inability to register is attributable to the absence of Spanish language affidavits.

3. The 1970 Amendments to the Voting Rights Act suspended in all jurisdictions any use of literacy tests or devices. These Amendments were effective on June 22, 1970, and were upheld by the United States Supreme Court (*Oregon* v. *Mitchell*, 400 U.S. 112), in December 1970. Our investigation included a sampling of registration records in 21 election districts in the three covered counties. While there is no evidence that the state continued to require a formal literacy test after the Act (except in isolated cases), in each election district examined, a significant percentage of those registration applications examined after June 1970 bear a notation that some proof of literacy was recorded.

The supplemental affidavit of Alexander Bassett indicates that New York authorities took reasonable steps to notify all registration workers of the suspension of all literacy requirements and that notations of proof of literacy resulted from either (a) obtaining such proof contingently in the event the courts ruled in New York's favor in the challenge of the literacy suspension or (b) isolated instances where individual registration officials continued to obtain literacy contrary to official instructions.

Based on the above findings I conclude, on behalf of the Acting Attorney General that there is no reason to believe

Affidavit of the Assistant Attorney General

that a literacy test has been used in the past 10 years in the counties of New York, Kings and Bronx with the purpose or effect of denying or abridging the right to vote on account of race or color, except for isolated instances which have been substantially corrected and which, under present practice cannot reoccur.

.....

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

Sworn to and subscribed
before me this 3rd day
of April 1972

.....

Notary Public
My commission expires

Motion to Intervene as Defendants

(Filed April 7, 1972)

Civil Action No. Civ. 2419-71

(Title omitted)

The N.A.A.C.P., New York City Region of New York State Conference of Branches, Simon Levine, Antonia Vega, Samuel Wright, Waldaba Stewart and Thomas R. Fortune, on behalf of themselves and all others similarly situated, move for leave to intervene as defendants in order to assert the defenses set forth in their proposed answer, a copy of which is attached hereto, on the following grounds:

1. This is an action brought by the State of New York to exempt from coverage by sections 4 and 5 of the Voting Rights Act of 1965, as amended, the counties of Bronx, Kings and New York in the state of New York. Petitioner N.A.A.C.P., New York City Region of New York State Conference of Branches, is an organization formed to protect the legal, social, economic and political rights and interests of black Americans, and it petitions to intervene on behalf of itself, its constituent branches, and all of its members and other black residents of New York, Bronx and Kings counties. Petitioners Simon Levine, Samuel Wright, Waldaba Stewart and Thomas Fortune are duly qualified black voters in Kings County, New York. Petitioners Wright and Stewart are members of the New York State Assembly and petitioner Fortune is a member of the New York State Senate. Petitioner Antonia Vega is a duly qualified Puerto Rican voter in Kings County, New York.

2. If the plaintiff in the instant action is successful, petitioners and the people whom they represent will be

deprived of all of the protections provided by sections 4 and 5 of the Voting Rights Act as amended, 42 U.S.C. §§1973b, 1973c. The State of New York will be able to immediately implement and enforce against petitioners and other minority voters changes in voting qualifications and prerequisites to voting and voting standards, practices and procedures, without first establishing that such changes do not have the purpose and will not have the effect of abridging or denying the right to vote on account of race or color, as is now required by section 5. Subsequent to August 6, 1975, New York will be able to deny petitioners and other minority group voters the right to vote for failure (a) to demonstrate the ability to read, write, understand or interpret any matter, (b) to demonstrate educational achievement or knowledge of any particular subject, (c) to possess good moral character, or (d) to prove their qualifications by the voucher of registered voters or of any other class. Compare 42 U.S.C. §1973b with 42 U.S.C. § 1973aa.

3. Petitioners have commenced an action in the United States District Court for the Southern District of New York to enforce section 5 of the Voting Rights Act, pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983, alleging that plaintiff has gerrymandered Assembly, Senatorial and Congressional districts in Kings, Bronx and New York counties so that, on purpose and in effect, the right to vote will be denied on account of race or color. *N.A.A.C.P. v. New York City Board of Elections.* If plaintiff were to succeed in the instant action petitioners would be legally bound by that decision in their action in the Southern District of New York and the New York action, resting as it does on the applicability of sections 4 and 5 of the Voting Rights Act to the three counties involved, would necessarily fail.

4. Petitioners thus have an interest in the subject of this action and are so situated that the disposition of this action will necessarily control their ability to protect their interests under sections 4 and 5 of the Voting Rights Act, including those asserted in *N.A.A.C.P.* v. *New York City Board of Elections*, and may impair or impede their ability to protect their interests in registering to vote, voting, and seeking public office free from laws or practices discriminatory in purpose or effect or otherwise invalid or unconstitutional.

5. On three occasions during the past three weeks, the last of them on Monday, April 3, 1972, attorneys in the Department of Justice represented to counsel for petitioners that the United States would oppose New York's motion for summary judgment in the instant action. These attorneys were advised by counsel for petitioners that petitioners were about to file *N.A.A.C.P.* v. *New York City Board of Elections*, that petitioners would oppose Justice Department approval of New York's changes in the Assembly, Senatorial and Congressional districts in New York, Kings and Bronx counties when those changes were submitted to the Department for approval, and that the United States Civil Rights Commission plans to hold hearings in New York City on April 19, 1972, to collect information as to whether it should also oppose those changes when they are submitted to Justice. At no time did any of the three Justice Department attorneys who assured counsel for petitioners that the United States would oppose the motion for summary judgment in the instant case inquire of counsel for petitioners whether he or any of the petitioners had information or evidence which would support the government's alleged position that sections 4 and 5 of the Voting Rights Act should continue to be applied to Kings, Bronx and New York counties. On Monday,

April 3, 1972, the United States filed a memorandum and affidavit consenting to New York's motion for summary judgment. Counsel for petitioners were first informed of this action on the afternoon of Wednesday, April 5. At that time counsel for petitioners advised the Department of Justice that petitioners might wish to take some action in the instant case, possibly including seeking to intervene. Counsel for petitioners are advised that the United States has requested that a decree exempting New York from coverage by sections 4 and 5 of the Act be entered as soon as possible. The United States is of course aware that the entry of such a decree will defeat petitioners pending action in *N.A.A.C.P.* v. *New York City Board of Elections*, render useless any submission by petitioners to the Attorney General opposing approval of the changes in New York's districting, make pointless the planned Civil Rights Commission hearings, and increase the legal obstacles to intervention. Under these circumstances it is painfully clear that the United States is not adequately representing the interests of petitioners.

6. Because counsel for petitioners was only informed within the last 48 hours that the United States would not adequately represent the interests of petitioners, and because substantial litigation of the issues herein has not yet occurred, the instant application to intervene is timely.

/s/ Jeffry A. Mintz
Jack Greenberg
Jeffry Mintz
Eric Schnapper
Suite 2030
10 Columbus Circle
New York, N.Y. 10019
Telephone: 212-586-839
Counsel for Petitioners

Affidavit of Eric Schnapper

(Filed April 17, 1972)

Civil Action No. Civ. 2419-71

(Title omitted)

County of New York,
State of New York, *ss.*:

Eric Schnapper, being duly sworn, deposes and says:

1. I am a member of the bar of the Supreme Court of California and a staff attorney at the N.A.A.C.P. Legal Defense and Educational Fund in New York City.

2. On March 10, 1972, I was first contacted by petitioner Samuel Wright with regard to the reapportionment of the Senatorial and Assembly districts and the pending reapportionment of the Congressional districts in Bronx, Kings and New York Counties. Mr. Wright requested that the N.A.A.C.P. Legal Defense and Education Fund provide legal assistance to prevent implementation of what he believed were racially gerrymandered districts in those three counties.

3. On March 21, 1972, I telephoned the Department of Justice in an attempt to contact Mr. Jerry Kieth, Esq., whom I was advised was responsible for reviewing New York's submissions of its reapportionment laws pursuant to section 5 of the Voting Rights Act. In Mr. Kieth's absence I spoke with Attorney Fred Gray of the Department. I advised Mr. Gray that when the redistricting laws were submitted to the Department of Justice I would want to submit material and arguments in opposition to their approval. Mr. Gray advised me that I should speak with

Mr. Kieth concerning this section 5 submission since Mr. Kieth was responsible for preparing recommendations for Department action on those laws. Mr. Gray informed me as well that the State of New York had instituted the instant action and had moved for summary judgment, that the case was being handled by Attorney Carl Shurtless for the United States, and that Mr. Shurtleff was preparing papers in opposition to that motion.

4. On March 23 I spoke by telephone with Mr. Shurtleff. Mr. Shurtleff confirmed that he was handling *New York* v. *United States* for the government, and that he was preparing to submit papers in opposition to New York's motion for summary judgment. Mr. Shurtleff also confirmed that Mr. Kieth would be handling the state's section 5 submission. I informed Mr. Shurtleff that we would want to present material concerning that submission and were considering instituting an action in the United States District Court for the Southern District of New York to enjoin New York from enforcing its redistricting legislation until the procedures of section 5 of the Voting Rights Act had been complied with.

5. On March 29, 1972, I spoke with Mr. Kieth by telephone. He confirmed that he was responsible for handling New York's section 5 submission, that Mr. Shurtleff was responsible for handling *New York* v. *United States*, and that Mr. Shurtleff was preparing papers for the United States opposing New York's motion for summary judgment. I advised Mr. Kieth that I would want to present material to the Department of Justice at the appropriate time concerning New York's section 5 submission, that I intended to bring on behalf of certain clients an action in the Southern District of New York to enjoin enforcement

of New York's redistricting laws until they had been approved by the Department, and that the United States Civil Rights Commission intended to hold hearings in New York City on April 19, 1972, to collect information regarding the redistricting in the three counties covered by the Voting Rights Act to consider whether to ask the Attorney General to disapprove of the new district lines.

6. On March 28, 1972, Governor Rockefeller signed into law Chapters 76, 77 and 78 of the New York Laws of 1972 fixing the new Congressional district lines in New York, Bronx and Kings counties.

7. On April 3, 1972, I spoke with Mr. Kieth by telephone for the second time. He informed me that the Department of Justice would have no objection to the institution of *N.A.A.C.P.* v. *New York City Board of Elections.* I specifically inquired as to whether any developments had taken place in *New York* v. *United States,* and Mr. Kieth told me that as far as he knew Mr. Shurtleff was still preparing the government's papers in opposition to the motion for summary judgment.

8. At approximately 3:00 p.m. on April 5 I spoke with Mr. Kieth by telephone and was informed for the first time that two days earlier the United States had consented to the motion for summary judgment filed by the State of New York.

9. Messrs. Gray, Shurtleff and Kieth all indicated that they were aware that if New York prevailed in *New York* v. *United States* any attempt to enforce section 5 against the state, either in a private action or through the presentation of material to the Department of Justice, would be

futile. At no time prior to the afternoon of April 5 did any of these attorneys intimate in any way that the United States was considering whether or not to consent to the motion for summary judgment. At no time did any of these three attorneys inquire whether I or petitioners had any evidence as to whether New York or officials in Kings, Bronx or New York counties had ever used a test or device, as defined in 42 U.S.C. § 1973b, with the purpose of the effect of denying or abridging the right to vote on account of race or color.

/s/ Eric Schnapper
Eric Schnapper

(Sworn to April 7, 1972.)

Complaint

(Filed April 7, 1972)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 72 Civ. 1460

Class Action

N.A.A.C.P., *etc., et al.*,

Plaintiffs,

—against—

NEW YORK CITY BOARD OF ELECTIONS, *et al.*,

Defendants.

JURISDICTION

1. This action arises under sections 5 and 12 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§1973c and 1973j. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343 and 42 U.S.C. § 1983.

CLASS ACTION ALLEGATIONS

2. Plaintiffs sue on behalf of themselves and all others similarly situated. The class consists of all black, Puerto Rican, and other non-white residents of Kings, Bronx and New York Counties. The class has approximately 2 million members, and is clearly so numerous as to make joinder of all members impracticable. The representative parties are represented by competent counsel experienced in litigation under the Voting Rights Act, petitioner NAACP

has a long history of protecting the interests of black residents of New York City, the representative parties have no interests antagonistic to those of the class, and the representative parties will thus fairly and adequately protect the interests of the class. There are questions of law and fact common to the class, including but not limited to whether the Counties of the Bronx, Kings and New York are covered by section 5 of the Voting Rights Act, 42 U.S.C. § 1973c and whether the state of New York complied with section 5 after it altered its Assembly, Senatorial and Congressional districts. The claims and defenses of the representative parties are typical of the claims and defenses of the class. The representative parties seek to bring this action under subdivision (2) of Rule 23(b), Federal Rules of Civil Procedure, because the defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

PARTIES

3. The N.A.A.C.P., New York City Region of the New York State Conference of Branches (hereinafter "NAACP") is an organization of 18 New York City branches of the National Association for the Advancement of Colored People. The NAACP and its constituent branches were formed to protect the legal, social, economic and political rights and interests of black Americans. The NAACP sues on behalf of itself, its constituent branches, all of its members, and all other black residents of the counties of New York, Bronx, and Kings, State of New York.

4. Simon Levine is a qualified elector of Kings County, State of New York, and a black man. Although there are more than 1.5 million black residents in large communities in the Bronx, Kings and New York Counties, these areas have been gerrymandered under Chapters 11, 76, 77 and 78, Laws of New York of 1972 in such a manner that the vast majority of these black residents, plaintiff Levine among them, are in Congressional, Assembly and/or Senatorial districts with a majority of white voters. Plaintiff Levine's right to vote is thus abridged or denied, on purpose or in effect, on account of his race or color, by means of gerrymandering which keeps in a minority black voters or black voters in combination with sympathetic non-black voters.

5. Antonia Vega is a qualified elector of Kings County, State of New York, and a Puerto Rican. Although there are almost a million Puerto Rican residents in large communities in the Bronx, Kings and New York counties, those areas have been gerrymandered in such a way under Chapters 11, 76, 77 and 78, New York Laws of 1972, that the vast majority of Puerto Ricans, plaintiff Vega among them, are in Congressional, Assembly or Senatorial districts with a majority of non-Puerto Rican voters. Plaintiff Vega's right to vote is thus abridged or denied, on purpose or in effect, on account of her race or color, by means of gerrymandering which keeps in a minority Puerto Rican voters or Puerto Rican voters in combination with sympathetic non-Puerto Rican voters.

6. Assemblymen Samuel Wright (54th Assembly District) and Thomas Fortune (55th Assembly District) and Senator Waldaba Stewart (18th Senatorial District) are

elected public officials and qualified electors residing in and representing parts of Kings County and seeking re-election to their respective offices. In order to have their names placed on the ballot in the forthcoming primary election, these plaintiffs are required to collect 50, 500 and 1,000 signatures respectively on nominating petitions from registered voters in their respective districts on or before May 2, 1972. The districts from which they are required to obtain these signatures were gerrymandered by Chapter 11, New York Laws of 1972, so as to make it more difficult for black candidates, or black candidates who vigorously advocated the interests of the black community, to obtain the needed signatures or to be elected. If these plaintiffs succeed in having their name placed on the ballot, they must then conduct extensive political campaigns for the nomination for and election to their respective political offices, including the raising and expenditure of funds, the recruitment and organization of volunteer supporters, and extensive personal campaigning. Their rights to vote as residents of their respective districts are denied or abridged, on purpose or in effect, on account of race or color because of this gerrymandering. If the new lines of the districts in which defendants are currently requiring that the elections be held are ultimately invalidated or altered because of the Voting Rights Act, virtually all of this petitioning and campaigning will be utterly wasted, inflicting upon plaintiffs an irreparable injury for which there is no possible remedy at law.

7. Defendant New York City Board of Elections is an agency of the City and State of New York established by law and responsible for the enforcement and administration of the Election Law in the City of New York, including the counties of Bronx, Kings and New York.

8. Defendants William Larkin, President, Gumbersindo Martinez, Secretary, and J.J. Duberstein are the Commissioners of the New York City Board of Elections and are the officials responsible for enforcing and administering, in the name and on behalf of the New York City Board of Elections, the Election Law in the City of New York, including the counties of Bronx, Kings and New York.

9. Defendant Louis J. Lefkowitz is the Attorney General of the State of New York and the chief legal officer thereof.

10. Defendant John P. Lomenzo is the Secretary of State of the State of New York and is designated to supervise the Board of Elections of the City of New York and is responsible for the enforcement and administration of the Election Law in the State of New York.

THREE JUDGE COURT

11. Plaintiffs ask that this Court convene a three judge federal court to consider the instant action, as required by 42 U.S.C. § 1973c.

CAUSE OF ACTION

12. On March 27, 1971, there was published in the Federal Register, 36 Fed. Reg. 5809, (i) a determination by the Director of the Bureau of the Census that in each of the counties of Bronx, Kings and New York in the State of New York, considered as separate units, less than 50 percentum of the persons of voting age residing therein voted in the presidential election of November, 1968, said determination being made pursuant to section 4(b) of the Voting Rights Act of 1965, as amended, and (ii) a deter-

mination by the Attorney General of the United States that New York State has a literacy test for prospective voters.

13. Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c, requires that any qualification, prerequisite, standard, practice or procedure, such as Senatorial, Assembly or Congressional district lines, may not be altered in any state or subdivision thereof as to which the determinations described in paragraph 12 have been made unless either (a) that alteration has been submitted by the chief legal officer of the jurisdiction enacting them to the Attorney General of the United States and the latter has not interposed an objection thereto within sixty days after such submission, or (b) a declaratory judgment has been obtained from the United States District Court for the District of Columbia that the alteration in said qualification, prerequisite, standard, practice or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

14. By reason of the foregoing facts, said section 5 of the Voting Rights Act, as amended, applies to Bronx, Kings and New York Counties in the State of New York.

15. On January 14, 1971, there was signed into law by the Governor of the State of New York Chapter 11, New York Laws of 1972, which law became effective immediately. This law altered the lines of the districts in which members of the New York State Assembly and Senate are elected, establishing lines and districts different from those which existed on November 1, 1968.

16. On March 28, 1972, there was signed into law by the Governor of the State of New York Chapters 76, 77 and 78, New York Laws of 1972, which law became effective immediately. This law altered the lines of the districts in which members of Congress are elected, establishing lines and districts different from those which existed on November 1, 1968.

17. Chapters 11, 76, 77 and 78, New York Laws of 1972, seek to establish qualifications or prerequisites to voting, or standards, practices, or procedures with respect to voting different from those in force or in effect on November 1, 1968.

18. The district lines set out in Chapters 11, 76, 77 and 78 are drawn with the purpose of abridging or denying, and do in effect abridge and deny, the rights of blacks, Puerto Ricans, and others, to vote on account of race or color, inter alia (a) by dividing substantial communities of minority groups among several districts so that such minority group will not constitute a majority of any one district, and (b) where minority group voters might be able to have an influence over elections in alliance with white voters sympathetic to the interests of the minority concerned, by placing those minority voters instead in districts in which the overwhelming majority of the voters are white voters unsympathetic or hostile to the interests of said minority groups.

19. The State of New York has neither sought nor obtained a declaratory judgment that the aforesaid changes in state law do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

20. On January 24, 1972, defendant Lefkowitz submitted the Senate and Assembly reapportionment bill, Chapter 11 of the New York Laws of 1972, to the Attorney General of the United States. On March 14, 1972, the Department of Justice informed the State of New York that it was unable to rule on this new law until the state provided certain additional information as required by the Department's guidelines under Section 5 of the Voting Rights Act, 36 Fed. Reg. 18186, and that the sixty day period for objection set out in 42 U.S.C. § 1973c would not commence to run until that information was received. The State of New York has not provided the Attorney General of the United States with this requested information.

21. Defendant Lefkowitz has not submitted the Congressional reapportionment law, Chapters 76, 77 and 78 of the New York Laws of 1972, to the Attorney General of the United States.

22. The census information on which reapportionment was based was made available to the defendants and to the State of New York no later than September 1, 1971, pursuant to a special study prepared for this purpose by the Bureau of the Census. Had it sought to do so, the state of New York could have enacted reapportioned districts and submitted them to the Attorney General of the United States sufficiently early that the Attorney General's response thereto could have been obtained and, if adverse, acted upon, long before the time when those lines would normally be, or would need to be, implemented. The fact that it is now too late to obtain ap-

proval from the Attorney General for the new districts in time to thereafter set up and hold new elections therein, with sufficient time for candidates to submit the required petitions and conduct meaningful campaigns, is due solely to the negligence or wilfulness of the State of New York and the defendants in failing to act with sufficient dispatch for the laws to receive timely consideration by the Attorney General of the United States.

23. Immediately after the enactment of the above mentioned Chapters 11, 76, 77 and 78, defendants commenced to enforce and implement them by issuing new maps of the Senate, Assembly and Congressional Districts, and by altering the lists of voters entitled to vote in such districts according to the new lines. On April 4, 1972, the defendants printed and began to distribute petition forms which candidates for election to the Senate, Assembly, Congress, party national conventions, and judicial conventions, must have signed by large numbers of voters in the newly defined districts in order for their names to appear on the ballot in the forthcoming primary election. These candidates are required to submit these duly signed petitions to the defendants on or before May 2, 1972. The defendants intend to hold primary elections on or about June 20, 1972, in these new districts, for nominees to the Assembly, Senate and Congress and for delegates to the national party conventions and the judicial conventions. Each of these steps enforcing Chapters 11, 76, 77 and 78 prior to their approval by the Attorney General of the United States is a violation of section 5 of the Voting Rights Act. Defendants intend, and will unless restrained, continue to violate the Act in this manner.

RELIEF

24. Each of the plaintiffs and the persons similarly situated will be irreparably injured by the enforcement of Chapters 11, 76, 77 and 78, and is without adequate remedy at law.

WHEREFORE, plaintiffs demand

(a) judgment in their favor that Chapters 11, 76, 77 and 78, Laws of New York of 1972, are in violation of section 5 of the Voting Rights Act,

(b) a preliminary and permanent injunction restraining defendants from enforcing or implementing Chapters 11, 76, 77 and 78 until such time as the procedures for obtaining approval of such laws set out in section 5 of the Voting Rights Act have been followed and such approval obtained,

(c) for the immediately impending elections and any succeeding elections occurring before defendants have obtained the requisite approval for new Assembly, Senatorial and Congressional district lines, that a special master be appointed to recommend to the Court alternative Assembly, Senatorial and Congressional district lines which will not, in purpose or in effect, deny or abridge the right to vote on account of race or color, and that the Court direct that all such elections to be held in or by Assembly, Senatorial or Congressional districts be held in or by such new districts as the Court shall direct pursuant to the recommendations of the special master.

(d) that this Court retain jurisdiction in this action until such time as defendants comply with section 5 of the Voting Rights Act,

(e) that this Court award plaintiffs their costs and attorneys fees; and

(f) that this Court grant such other and further relief as may be just and proper.

Dated: New York, N.Y.
April 7, 1972

/s/ Jonathan Shapiro
Jack Greenberg
Jonathan Shapiro
Eric Schnapper
Suite 2030
10 Columbus Circle
New York, New York 10019
Telephone: 586-8397

Answer

(Filed April 7, 1972)

Civil Action No. 2419-71

(Title omitted)

Comes now the applicants for intervention, by and rough their attorneys, and answer as follows:

1. Applicants admit the allegations of paragraph 1 of e amended complaint, hereinafter referred to as the Com-laint.

2. Applicants admit the allegations of paragraph 2 of e Complaint.

3. Applicants admit the allegations of paragraph 3 of e Complaint.

4. Applicants admit the allegation of the first sentence f paragraph 4 of the Complaint. With respect to the alle-ation in the second sentence of paragraph 4, the appli-nts admit that English-Spanish affidavits are now pro-ded by the New York City Board of Elections but, on formation and belief, aver that such affidavits were not provided prior to 1967.

5. Applicants admit the allegations of paragraph 5 of e Complaint, except in so far as the allegations refer Article I, section 1 of the Constitution of New York, ther than Article II, section 1.

6. The applicants are without knowledge or information fficient to form a belief as to the allegation of paragraph of the complaint, except as is set out in paragraphs 17-20 low.

Answer

7. Applicants admit the allegations of paragraph 7 of the Complaint in so far as it alleges the legal effect of the Voting Rights Act Amendments of 1970 but aver, on information and belief, that the suspension of literacy requirements was not uniformly implemented.

8. Applicants admit the allegations of paragraph 8 of the Complaint.

9. Applicants admit the allegations of paragraph 9 of the Complaint.

10. Applicants admit the allegations of paragraph 10 of the Complaint.

11. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint, except as set out in paragraphs 17-20 below.

12. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint. Applicants aver that if only a small number of persons failed the literary tests this was because non-white potential voters were deterred from even taking the test for the reasons set out in paragraph 17 below.

13. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13.

14. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14.

Answer

15. Applicants are without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint, except to the extent set out in paragraphs 17-20 below.

17. The literary tests administered by the state of New York during the last 10 years were generally conducted in such a manner in the non-white communities as to humiliate persons who had difficulty passing those tests or who failed those tests. This practice was well known throughout the non-white communities, and deterred potential voters from seeking to register. Virtually all the persons administering these tests were white, even in the non-white communities, due in part to discriminatory tests used by New York in certifying teachers. Potential voters were particularly reluctant to risk such humiliation at the hands of white literacy examiners because racial gerrymandering of Assembly, Senatorial and Congressional districts was so widespread and successful as to give mose non-white voters little chance to influence elections held in such districts.

18. The rate of illiteracy, actual and functional, in the counties of Bronx, New York and Kings, was and is substantially higher among non-white persons of voting age than among white persons of voting age.

19. With regard to adults who were educated in the state of New York, the difference in the literacy rates is the result, inter alia, of differences in the quality of the

public education afforded to white and non-white children during the decades when persons now adults were growing up. The inferior quality of the education afforded non-white children resulted from a variety of actions by the state of New York, leading to the creation of all non-white schools or school districts, discrimination against non-white applicants for teaching and supervisory positions in the public schools, differences in the per capita expenditures in white and non-white schools and school districts, differences in the training, experience, salaries and abilities of teachers in white and non-white schools and school districts, and a lack of incentives for non-white children to remain in school.

20. With regard to black adults who were educated outside of the state of New York, the vast majority of these were educated in southern states in which they were subjected to discrimination and inferior education on account of their race or color and often required to attend all black schools pursuant to state established school segregation.

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Affidavit of John G. Proudfit

(Filed April 12, 1972)

Index No. 2419-71

[Title Omitted]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.:*

JOHN G. PROUDFIT, being duly sworn, states as follows:

I am an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York. I am familiar with the proceedings had heretofore in this action. I make this affidavit in opposition to the motion to intervene as defendants made by the applicants for intervention.

The complaint in this action was filed on December 3, 1971. Shortly thereafter information about the filing of the complaint was requested by the Washington Post and early in February an article appeared in the New York Times.

On January 31, 1972 a motion was filed on behalf of defendant requesting additional time of 90 days within which to file an answer or other pleadings. This motion was thereafter withdrawn when plaintiff stipulated to an additional 30 days. Defendant's thereafter requested an additional 5 days which was granted by stipulation. On March 10, 1972 the defendant's answer was filed.

This action has been pending for over 4 months. During this period investigators and attorneys from the Justice Department have been going through records and conducting interviews in the three named Counties in this action, and on numerous occasions plaintiff's attorneys

provided information and assistance upon request of the attorneys for the Department of Justice. The applicants for intervention were *clearly* on notice that this action had been instituted (in his affidavit in support of the motion Mr. Schnapper merely states that he was informed of the present action on March 21, 1972, but does not state that he had no prior knowledge).

The motion clearly does not meet the requirement of timeliness imposed by Rule 24 of the Federal Rules of Civil Procedure. Furthermore, the belated attempt to claim that because the applicants for intervention thought that the Justice Department would not consent to the plaintiff's motion for summary judgment that they took no action, should not be accepted as an excuse by this Court.

Applicants for Intervention had a period of over *four* months in which to present evidence, *if they had any,* to the Justice Department on how plaintiff had used its literacy tests to deny any person's right to vote on account of race or color.

Applicants do not allege any facts of discrimination other than a general allegation of educational inequality in their Points of Law and proposed Answer. No where is there *any* factual evidence supporting such charge.

None of the applicants for intervention alleges that he has been discriminated against by reason of the application of the literacy test, and in fact, *all* of the named individual applicants for intervention according to motion papers are *qualified* voters in the State of New York.

The motion by the applicants for intervention *clearly* shows that its real purpose is *not* to challenge the application of the literacy test which is central to this action, but that applicants for Intervention are seeking to attack

New York State's recent reapportionment of its Assembly, Senate and Congressional Districts. Proof of this is the fact that applicants for intervention are *one* and the same as the plaintiffs in the class action commenced in the District Court in the Southern District of New York. Furthermore, applicants' remedy against the claimed discriminatory reapportionment under Section 1983 of the Civil Rights Act would in no way be barred by this Court's granting plaintiffs' motion for summary judgment.

Finally, the instant motion will clearly result in the undue delay and prejudice contemplated by Rule 24(b) of the Federal Rules of Civil Procedure. Plaintiff from the commencement of this action has sought a quick resolution because of the impending primary elections on June 20, 1972. Pursuant to the State Law this primary election procedure commenced on April 4, 1972 with the first day for signing designating petitions. Filing of these petitions will occur on May 8-11, followed by amongst other specific dates May 16, for accepting or declining designations, May 19 for filling vacancies, and June 5 for Certification by the Secretary of the State.

A delay on adverse decision by this Court with respect to plaintiff's action, not only will jeopardize the selection of candidates for the Assembly, Senate and Congress, but also the selection of delegates to the National Convention in the Democratic primary. Delegates to the Convention are chosen upon the basis of the Congressional Districts.

Although the New York State Attorney General submitted the new Assembly and Senate district lines to the Justice Department on January 24, 1972, I have been informed that the Justice Department did not conduct an examination into these new lines for six weeks there-

after, since it was believed that the instant action might obviate the necessity for such examination. Further delay in the instant action coupled with the time consuming process of requiring the Justice Department to investigate the new Assembly, Senate and Congressional lines would make it unlikely that a June primary could take place in New York State on District lines based on the 1970 Census figures.

For the foregoing reasons it is respectfully submitted that the motion for intervention is untimely, that it is without merit, that intervenors are not injured parties, and that granting of such motion would cause undue delay and prejudice to the plaintiff.

WHEREFORE, it is respectfully requested that the motion to intervene be denied and that plaintiff's motion for summary judgment be granted.

/s/ JOHN G. PROUDFIT
JOHN G. PROUDFIT

(Sworn to April 11, 1972.)

Order of the District Court

(Filed April 13, 1972)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2419-71

NEW YORK STATE, on behalf of New York, Bronx and Kings Counties,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant,

N.A.A.C.P., NEW YORK CITY REGION OF NEW YORK STATE CONFERENCE OF BRANCHES, *et al.*,

Applicants for Intervention.

This matter came before the Court on Motion by plaintiff, New York State, for Summary Judgment, a response by defendant, United States of America, consenting to the entry of such judgment, and a Motion to Intervene as party defendants by the N.A.A.C.P., New York City Region of New York State Conference of Branches, et al.

Upon consideration of these Motions, the memoranda of law submitted in support thereof, and opposition thereto, it is by the Court, this 12th day of April 1972,

ORDERED that said Motion to Intervene as party defendants by N.A.A.C.P., New York City Region of New York

Order of the District Court

State Conference of Branches, et al. should be and the same hereby is denied, and it is

FURTHER ORDERED that the Motion for Summary Judgment by plaintiff, New York State, should be and the same hereby is granted.

/s/ EDWARD ALLEN TAMM
/s/ WILLIAM B. JONES
/s/ JUNE GREEN

FILED
APRIL 13, 1972
JAMES F. DAVEY, Clerk

Motion to Alter Judgment

(Filed April 24, 1972)

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Civil Action No. 2419-71

[Title Omitted]

Applicants in the above mentioned action move the Court to alter or amend the order and judgment entered in this action on April 13, 1972, in so far as said order and judgment deny applicants' motion to intervene and grant plaintiff's motion for summary judgment, on the following grounds:

1. Plaintiff's memorandum and affidavit in opposition to intervention, which were filed with the Court on April 11 or 12, 1972, were not received in the mail by applicants' counsel until the morning of April 13, 1972, after this Court had read that memorandum and affidavit and ruled on the questions at issue. This delay in actual service denied applicants any opportunity to respond to the legal and factual issues raised by plaintiff.

2. Neither applicants nor their counsel knew of this action until at least March 21, 1972, and applicants acted with all possible dispatch to seek to intervene upon learning that the United States would not seek to represent their interests. Under the circumstances not only was the motion to intervene filed on April 7, 1972, timely, but it would have been premature had it been filed earlier than April 3, 1972.

3. Census data and governmental and private studies of illiteracy and educational opportunities in the 3 counties

covered by the Act demonstrate conclusively that the education afforded non-white children by plaintiff was substantially inferior to that afforded to white children, and that this difference resulted in disparities in white and non-white illiteracy rates among persons otherwise eligible to vote in those counties during the 10 years prior to the filing of the instant action. Under these circumstances a full evidentiary hearing is required before making any finding of fact as to whether plaintiff's literacy tests discriminated on the basis of race, and applicants' motion for intervention should have been granted.

4. In view of the Court's special fact finding responsibilities under the Voting Rights Act, and of the substantial public interest which this action will affect, the Court should not have approved the consent judgment desired by plaintiff and defendant without first soliciting the intervention of responsible interested parties and requiring the United States to undertake a more thorough investigation of the relevant facts.

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Points and Authorities

(Filed April 24, 1972)

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Civil Action No. 2419-71

[Title Omitted]

Applicants offer this memorandum of points and authorities in support of their motion to alter this Court's order and judgment of April 13, 1972.

I. *The Motion for Intervention Was Timely.*

Plaintiff argues at great length that the motion for intervention is untimely because applicants or their counsel may have known of this action for the last four months. This argument is defective for three reasons. First, as is shown by the supplementary affidavit of Eric Schnapper, applicants and their counsel did not know of this case until March 21, 1972. There is no provision in the Federal Rules of Civil Procedure for notice by publication of a story in the Washington Post and New York Times, nor could these be consistent with due process. Second, even if applicants and their counsel had had such knowledge, their special interest in the instant proceeding arose out of the New York reapportionment laws, which were only completed on March 28, 1972. Hence they not only had no special reason to intervene before that date, but a motion prior thereto might well have been premature. Third, prior to April 3, 1972, there was no reason to doubt that the United States would adequately protect applicants interests, and a motion to intervene prior to April 3 would likewise have been premature.

Points and Authorities

The record in this case shows that the State of New York waited 7 months after being placed under sections 4 and 5 of the Voting Rights Act before filing the instant action, and that another 4 months elapsed before the motion for summary judgment came to a head. By comparison, the application for intervention was filed 51 hours after applicants' counsel learned the United States had consented to the motion for summary judgment and 27 hours after prompt filing was requested by this Court.

Plaintiff expresses concern that if their motion for summary judgment is not granted at once the elections in New York may be affected, i.e., that applicants' New York action will succeed. This predicament is of plaintiff's own making. Plaintiff delayed 7 months in bringing the instant action, consumed half a year in enacting its new apportionment laws, and then failed to obtain timely approval of the Department of Justice for those laws. Plaintiff's only hope of escape from the natural consequences of these actions is to persuade this Court to forgo any evidentiary hearing and to agree to its motion, uncontested by the United States, for summary judgment. Although plaintiff's seem to regard as an aberration the holding of such a hearing prior to any judicial finding of fact, such a hearing is, rather, normal American judicial practice.

II. *There Is Sufficient Evidence of Discriminatory Effect of the Literacy Tests to Warrant Intervention.*

In their Memorandum in opposition to intervention, plaintiffs urge that applicants must offer both hard allegations as to discriminatory use or effect of the literacy tests and evidence of such use or effect as well.

Detailed allegations as to both discriminatory use and effect are contained in paragraphs 17-20 of applicants

proposed Answer. Those allegations are sufficiently particular to warrant intervention, especially in view of the short period of time in which applicants were asked to submit their motion and supporting papers.

The factual questions as to discriminatory effect of the literacy tests are tremendously complex. Inquiry should be made, with regard to a period running back at least to the turn of the century, as to a wealth of factors which might bear on the equality of educational opportunity: per capita expenditures, extent of de facto segregation, segregation within individual schools, experience and training of teachers, age and condition of building, size of classes, availability of special facilities, over-crowding or double sessions, discrimination by professional staff, discrimination in the selection or promotion of school employees, etc. No one would seriously contend that applicants could or should have developed a detailed factual record in this regard in the brief period of time in which the motion for intervention had to be filed.

A. *The Unequal Educational Opportunities Afforded White and Non-White Students is Well Documented.*

A sufficiently substantial amount of governmental and semi-official studies are available documenting the unequal educational opportunities afforded whites and non-whites in the three affected counties to warrant a full scale judicial inquiry. Several such reports are appended hereto as exhibits A-G. Exhibit A is an article prepared by the staff of the New York City Municipal Reference Service and published in the Bulletin of the New York Public Library which surveys the history of Negro education in the city covering both the de jure segregation which persisted at least until the late nineteenth century and the

de facto segregation which emerged in the early twentieth. Exhibit B is a study of Negro school children in Manhattan prepared for the Board of Education by an employee of the Public Education Association in 1915 detailing discriminatory attitudes by white teachers and supervisors and the inadequacy of social services provided to Negro children by the schools. Exhibit C is the relevant portions of the report of the Mayor's Commission on Conditions in Harlem detailing the inferior school system which contributed to the Harlem riots in the mid-1930's. Exhibit D is a systematic study of the inferior equality of education afforded non-whites prepared in 1955 by the Public Education Association at the request of the New York City Board of Education. Exhibit E is a New York court decision in 1958 holding that the city schools for non-white children were inferior to those for white children. Exhibit F is a report by a civic group in Bronx County as to per capita expenditure and other differences between the twelve worst elementary schools in the county, all located in the South Bronx ghetto, and the twelve best schools, all located outside it. Exhibit G is the result of a computer study of official data on New York City Schools prepared by a private research organization.

As might be expected, the most detailed and quantitative studies are the most recent ones. These studies offer evidence not only as to conditions as of when they were prepared, but also are indicative of the situation years earlier since which, according to officials, things have markedly improved.

The Court's attention is also directed to the recent decision in *Chance* v. *Board of Examiners,* 330 F. Supp. 203 (S.D.N.Y., 1971), in which the District Court held that the examinations used by the 80 year old Board of

Examiners of the City of New York discriminated against non-white applicants for supervisory positions in the public school system.

The deleterious effect of de facto segregation *per se* is of course well known. See e.g., Coleman et al., *Equality of Educational Opportunity* (1966); U.S. Civil Rights Commission, *Racial Isolation in the Public Schools* (1967).

B. *The Differences in Educational Opportunities Afforded Whites and Non-Whites Resulted In Substantial Differences in Illiteracy Rates.*

This disparity between the educational opportunities afforded whites and non-whites manifests itself all too clearly in the respective educational levels attained by the two groups.[1]

Since the beginning of the century the proportionate number of non-white children not attending school has consistently exceed that of white children.

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[1] The meaning of the census data used below is complicated by the fact that the Census Bureau used different forms over the period in question. It is necessary to compare, for example, illiteracy among persons over 10 (1930), with years of school completed by persons over 14 (1940) and over 25 (1960). Some data is for urban New York State, some for New York City, and some for individual counties. Sometimes all non-whites are lumped together and sometimes they are not. The overall statistical picture is nonetheless clear.

Table 1

Number of children per 1,000 aged 7 to 13, not enrolled in school in New York City:[3]

	White	*Non-White*	*Percentage Difference*
1910	58	83	43%
1920	59	66	12%
1930	23	33	43%
1940	28	34	21%
1950	53	55	4%
1960	30	48	60%

Among the children who did attend school, non-white children were consistently behind their white peers. In 1950, the earliest year for which such census data is available, the proportion of non-white children more than one grade behind their age group (i.e. eight year olds in first grade, nine year olds in first and second grades) was uniformly higher than that of white children.

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[3] Source: Census of 1920, Characteristics of Population of New York, p. 676, table 2 (data for 1910 and 1920 is for New York urban population, which included but was not limited to New York City); Census of 1940, Characteristics of Population of New York, pp. 167, 172, 179, tables D-38, E-38, F-38 (data for 1930 and 1940 is aggregate of data for Bronx, Kings and New York Counties); Census of 1950, Characteristics of Population of New York, V.32, pp. 189 and 220, tables 51 and 63; Census of 1960, Characteristics of Population of New York, V.34, pp. 449-451, Table 101.

Table 2

Number of children per 1,000 aged 7 to 13, more than one grade behind in school, in New York City.[3]

Age	*All males*	*Non-white males*	*Percentage Difference*
8	17	29	70%
9	38	63	66%
10	60	100	67%
11	74	133	79%
12	80	173	116%
13	96	200	108%
Age	*All females*	*Non-white females*	*Percentage Difference*
8	18	40	122%
9	33	45	36%
10	54	86	59%
11	61	106	74%
12	64	124	94%
13	78	147	88%

Among students enrolled in school and in each particular grade, non-white children are consistently behind white children in reading skills. Although reading ability has only recently been broken down according to race, there is no reason to assume this situation improved over the period in question. A study of 284 of a total of 557 elementary

[3] Source: Census of 1950, Characteristics of Population of New York, V.32, pp. 189 and 220, tables 51 and 63.

schools in New York City from 1966 to 1969, prepared by the Center for Urban Education and published in the Columbia Journal of Law and Social Problems yielded the following results. For grades two through six, the average reading scores for schools that were 70% or more black were slightly more than a year (—.53) behind the national norm for each grade each year. The scores for schools that were 70% or more Puerto Rican were almost a year behind (—.92). The scores for schools that were 70% or more white were almost a full year ahead of the national norm (+.97). Thus the average gap between the 70% or more black schools and the 70% or more white schools was equivalent to a year and a half of reading achievement compared to the national norm, and the gap between 70% or more Puerto Rican schools and those white schools was almost two years. Most significantly, the gaps between these schools *widened* the longer a child remained in school. Each year the average student in a 70% or more black or Puerto Rican school fell a third of a year (.35 and .39 respectively) behind his counterpart in a 70% or more white school. Comment, Columbia Journal of Law and Social Problems, V.6, p. 374, 387-388, n.115. The Report of the United Bronx Parents, cited earlier, showed that all of the 12 worst Bronx elementary schools, measured by reading scores, were less than 20% white, and all but one of the 12 best schools were at least 60% white. *Distribution of Educational Resources Among Bronx Schools,* pp. 2-3. This impact of inferior educational facilities on non-white students in New York City has already been recognized by at least one court. In *Council of Supervisory Association of the Public Schools of New York City* v. *Board of Education of the City of New York,* 23 N.Y. 2d 458, 463, 297 N.Y.S. 2d 547, 551, 245 N.E. 2d 204, 207, modified on

appeal 24 N.Y. 2d 1029, 302 N.Y.S. 2d 850, 250 N.E. 2d 251 (1969), the court found:

> [T]he initial handicap of the nonwhite child, when he first came to school . . . was not redressed under the mitrna s-
> ministrations of the public schools. It got worse. At the end of the eighth grade the nonwhite child was relatively further behind his white fellow pupil than he had been at the beginning; at the end of the 12th grade the disparity increased.

This discrimination against non-white children in the schools of New York City predictably resulted in disparities in the literacy rates of white and non-white adults. The last year in which the Bureau of the Census obtained information on illiteracy as such was 1930. The census of that year showed a tremendous difference in the literacy rates among native-whites, negroes, and other races (primarily Chinese and Puerto Ricans).

Table 3

Illiteracy in population 10 years old and over, by color, in per cent.[4]

	Native-White	*Negro*	*Other*
New York City	.4	2.1	22.9
Bronx County	.2	1.3	16.2
Kings County	.1	2.8	16.3
New York County	.8	1.9	27.0

[4] Source: Bureau of the Census, Negroes in the United States, 1920-1932, p. 252, Table 35.

Points and Authorities

The population of New York City over 10 in 1930 would have been over 42 in 1962, and in 1962 persons over 42 accounted for 50% of the voting age population. *Statistical Abstract of the United States*, 1968, p. 25, table 25.

In 1940 the Census Bureau, instead of soliciting information on illiteracy, asked instead the number of years of school which each person had completed, and all persons with less than five years of school completed were considered actually or functionally illiterate. Folger and Ham, *Education of the American Population*, 111-126 (1967). The proportion of non-whites with less than 5 years of school substantially exceeded that for whites.

Table 4

Persons 25 years old and over, by years of school completed in 1940, in per cent.[5]

	Native White	*Negro*	*Other*
Bronx County—			
0 years	0.7%	4.2%	20.3%
1-4 years	1.6%	8.9%	12.6%
Under 5 years	2.3%	13.1%	32.9%
Kings County—			
0 years	1.2%	7.0%	26.5%
1-4 years	1.9%	13.8%	16.9%
Under 5 years	3.1%	20.8%	43.4%
New York County—			
0 years	1.1%	2.4%	28.7%
1-4 years	2.9%	12.9%	23.0%
Under 5 years	4.0%	15.3%	51.7%

[5] Source: Census of 1940, Characteristics of the Population of New York, pp. 166, 173, 180, tables D-39, E-39, F-39.

Points and Authorities

Since 1940 the Census Bureau has not distinguished between native whites and immigrant whites who did not attend American schools and who are not eligible to vote because of their lienage.[6] That the differences in literacy rates have not changed substantially is readily inferred from the fact that non-white illiteracy has remained extremely high.

Table 5

Years of school completed by non-white 14 years old and over, in 1960, in per cent.[7]

	0 years	*1-2 years*	*3-4 years*	*Under 5 years*
Bronx County	2.3%	1.6%	5.5%	9.4%
Kings County	3.0%	2.0%	6.4%	11.9%
New York County	4.0%	2.2%	7.1%	13.3%

Even assuming that that rate of illiteracy among native whites did not decline at all from 1940 to 1960, the non-white illiteracy rate exceeded the white rate by a substantial margin. The factor by which white illiteracy was exceeded by the non-white rate in various years is set out below.

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[6] Since 1950, literacy has been a prerequisite in most cases to naturalization, *Petition of Contreras*, 100 F.Supp. 419 (S.D. Cal., 1951); 8 USC § 1423.

[7] Source: Census of 1960, Characteristics of Population of New York, V.34, pp. 465-468, Table 103.

Table 6

Factors by which non-white, Negro or others illiteracy rate exceed white illiteracy rate.

	Bronx County	*Kings County*	*New York County*
Negro 1930/ Native White 1930	6.5 x	28.0 x	2.4 x
Other 1930/ Native White 1930	81.0 x	163 x	34 x
Negro 1940/ Native White 1940	5.7 x	6.7 x	3.8 x
Other 1940/ Native White 1940	14.3 x	14.0 x	12.9 x
Non-white 1960/ Native White 1940	4.1 x	3.7 x	3.3 x

In *Gaston County* v. *United States,* 288 F.Supp. 678, 687 (D.C. Cir., 1968), the illiteracy rate, defined as less than 5 year of education, was 17.4% among whites and 30.1 percent among Negroes. In that case, because the Negro rate of illiteracy exceeded the white rate by a factor of 1.7x, that difference was sufficient to prompt the Court to hold that the County's literacy test had discriminated in effect against Negroes. A fortiorari the same conclusion is required here when the difference between white and non-white literacy rates is 2 to 96 times greater than in Gaston County.

III. *Even in the Absence of this Application For Intervention, the Court Should Not Have Entered the Judgment Sought by Plaintiff.*

An action such as this one, to exempt three counties with a combined population of several million from the protections of the Voting Rights Act, is not like an ordinary civil action. In such a typical civil action the parties are free to settle the case on any terms they please at any time, just as they might have settled their differences without ever coming to court. The instant action differs from such causes in two vital respects. First, the parties were never at liberty to negotiate a settlement without resort to litigation; the law explicitly requires an independent judicial determination that literacy tests have not been used with the purpose or effect of discrimination before an exemption may be granted. Second, the Department of Justice, like a private attorney in a class action, must represent not only its nominal client, the United States, but the public interest as well; the Court must scrutinize the adequacy of the Department's advocacy of the public interest, and particularly any attempted compromise or waiver thereof to guard against any failure of responsibility by or conflict of interest facing the government's attorneys.

In the instant action the United States asks the Court to make the required findings of fact without seeking to offer any evidence to the contrary. The Court's judicial responsibility under the Voting Rights Act requires that it take two steps before entering such findings. First the Court should ascertain whether it is likely that other groups or persons, not yet parties to the action, might wish to offer evidence in opposition to the findings sought. Such information can be obtained by inquiring of the government, or ascertaining from its papers, what contact took place

between the United States and possibly interested parties. Where it appears there may be responsible persons or organizations willing to litigate the issues before the Court, their intervention should be explicitly invited by the Court just as the brief of an amicus is occasionally solicited. Second, even where no such potential litigants exist, the Court should inquire whether the government has exercised due diligence in pursuing every reasonable investigation to unearth and present to the Court facts which might tend to militate against the requested finding. Where such diligence has not been used, the Court should direct further inquiry by the United States.

These two duties are imposed upon the Court by section 4 of the Voting Rights Act by virtue of its responsibility to make an independent and informed judicial determination as to certain facts. The Court cannot carry out that responsibility by merely accepting the judgment of the United States that the requested relief is warranted; it must take every reasonable step to assure that the findings it makes are well founded on the relevant facts. The Court's duties here are analogous to that of a trial judge confronted by a defendant who seeks to plead guilty. Although both the prosecution and defense may want the plea accepted, such a judge must in the interest of justice ascertain independently of them that the plea is knowing and voluntary.

The same duties must be borne by the Court in any action such as this one affecting the public interest, regardless of any special statutory fact finding responsibilities. The United States has virtually unlimited discretion in deciding whether to initiate a civil or criminal action, but once such a dispute is brought into court the judiciary as well as the executive branch must be satisfied that any

proposed resolution of the controversy is just and fully warranted by the facts.

It is readily apparent from the papers in this case that, wholly aside from applicants, there are responsible individuals and organizations affected by the proposed judgment who might wish to offer evidence to the Court. The affidavit of Mr. Norman recites no effort by the United States to contact or interview persons or groups who would want to offer it or the Court evidence in opposition to the proposed judgment. The affidavit recites vaguely that interviews were conducted with "election and registration officials and . . . persons familiar with registration activity in black and Puerto Rican neighborhoods," page 2, but for all that appears every person interviewed may have been an employe or agent of the plaintiff in the instant action. Under these circumstances the Court should have directed the United States to prepare a list of responsible persons and organizations and to write each of them, advising them of the status of the proceeding and inviting them to seek to intervene.

It is even more apparent from the papers in this case that the United States has been derelict in its fact finding responsibility. In an action such as this one the state must establish that its literacy tests were not used with the purpose or the *effect* of discriminating on the basis of race or color. With regard to the latter requirement the crucial evidence is whether the illiteracy rate was higher among non-whites than among whites, and whether such a difference may have been caused by differences in the educational opportunities afforded whites and non-whites. *Gaston County* v. *United States*, 288 F.Supp. 678 (D.C. Cir., 1968), 395 U.S. 285 (1969). It is clear from the record in this action that the United States, which inquired with

such diligence into literacy rates and educational discrimination when sued by Gaston County in 1966, made absolutely no such inquiry when sued by the state of New York in 1971. This failure is particularly difficult to understand in view of the fact that the inferior nature of ghetto schools in New York City is common knowledge. Under these circumstances the Court should have declined to enter the requested judgment and directed the United States to inquire into relevant facts.

Conclusion

For these reasons applicants motion to alter the order and judgment of April 13, 1972, should be granted.

Respectfully submitted,

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Affidavit of Eric Schnapper

(Filed April 24, 1972)

Civil Action No. 2419-71

[Title Omitted]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.:*

ERIC SCHNAPPER, being duly sworn, deposes and says:

1. I am counsel for applicants for intervention in the above mentioned action.

2. Prior to March 21, 1972, I had no knowledge whatever of the commencement, pendency or existence of this action.

3. Throughout the months of December, 1971 and January and February, 1972, I was in the state of New Hampshire. The daily paper which I regularly read there was the Concord Daily Monitor and Patriot, and it carried no story about the instant action.

4. To the best of my knowledge neither my co-counsel nor any of the applicants for intervention knew of the commencement, pendency or existence of this action prior to March 21, 1972.

5. The affidavit and memorandum submitted by the plaintiff in opposition to the motion for intervention were delivered to my office by the United States Post Office on the morning of Thursday, April 13, 1972, after this Court had already read that affidavit and memorandum and ruled on applicants' motion.

6. At approximately 3:00 p.m. on April 5, 1972, I was informed for the first time by Mr. Kieth of the Department of Justice that two days earlier the United States had consented to the motion for summary judgment filed by the state of New York. On April 6, 1972, I spoke twice by telephone with Judge Green's law clerk. I indicated that applicants would seek to intervene in the instant action, and he requested that all papers be filed by the next day, April 7, 1972. I drafted and typed papers in the instant action and in *NAACP* v. *Board of Elections* throughout the night of April 6-7, and filed the complaint and summons in *NAACP* v. *Board of Elections* prior to noon on April 7. I then flew to Washington, D.C., and for the first time was able to examine the papers filed by the plaintiff and defendant in this action at approximately 3:00 p.m. in the reception room to Judge Green's chambers. After further drafting, modifying and typing applicants' papers in the light of the contents of the papers of the plaintiff and defendant, I delivered applicants' motion and supporting papers to Judge Green's clerk at approximately 6:00 p.m. on April 7, 1972.

/s/ Eric Schnapper
Eric Schnapper

(Sworn to April 24, 1972)

THE STATUS OF THE PUBLIC SCHOOL EDUCATION OF NEGRO AND PUERTO RICAN CHILDREN IN NEW YORK CITY

Presented to:

The Board of Education Commission on Integration

Prepared by:

The Public Education Association assisted by the

New York University Research Center for Human Relations

Requested by:

Col. Arthur Levitt,

President of the New York City Board of Education

October, 1955

THE STATUS OF THE PUBLIC SCHOOL EDUCATION OF NEGRO AND PUERTO RICAN CHILDREN IN NEW YORK CITY

1. *Introduction*

History

On June 21, 1954, at the annual dinner of the Urban League, Colonel Arthur Levitt, then President of the New York City Board of Education, pledged the Board of Education to a fight against ethnic discrimination in the New York City School System. At the same dinner, Kenneth B. Clark, Associate Professor of Psychology at City College, reiterated statements concerning the problems of ethnic separation in the City's schools, which he had made on other occasions. In essence he suggested:

1. That there is a serious teacher turnover in schools which are populated primarily by Negro and Puerto Rican children.
2. That there is a discrepancy between the number of classes for the mentally retarded and the intellectually gifted in these same schools.
3. That educational standards are lower in Negro and Puerto Rican schools and that facilities are inadequate.
4. That school officials have on occasion been guilty of gerrymandering school districts to the disadvantage of Negro and Puerto Rican children.

The following day President Levitt of the Board of Education called and then wrote President Nichols of the Public Education Association and suggested to him that the Public Education Association conduct a "full, impartial and objective inquiry" into the status of the public school education of Negro and Puerto Rican children in New York City. He asked that this be done "for the purpose of aiding all concerned in the attainment of the ultimate goal: the completely integrated school."

The Board of Trustees of the Public Education Association agreed to accept the responsibility for making an investigation and a committee headed by Mrs. Morris Shapiro was created to implement Colonel Levitt's request into action. The Public Education Association also formulated the following statement of principle to direct its efforts with respect to the inquiry:

Statement of Principle

Racial segregation in our public schools, based on the concept of "separate but equal" facilities, denies the basic right of every American child to equality of educational opportunity. As such, segregation strikes hard at the roots of democratic society. The Supreme Court decision of May 17, 1954, outlawing segregation in the schools, was a historic reaffirmation of this truth. It states:

"Segregation with the sanction of the law . . . has a tendency to retard the educational and mental development of Negro

children and to deprive them of some of the benefits they would receive in a racially integrated school system."
Justice Warren further stated:

"To separate them (Negro children) from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

It remains for the American people to increase their efforts to wipe out segregation, illegal or defacto, until no trace of the blight remains in our educational system. In New York City, with its millions of inhabitants of every race, creed and color, it is especially important to investigate all reports of segregation and eliminate it where it is found to exist. This is a job for both our school authorities and the community as a whole.

The city's Board of Education has shown its desire to achieve this objective by requesting the Public Education Association to conduct a survey of alleged segregation in our school system. And on our part, the Public Education Association, as a community organization, accepts the assignment gladly, in the hope that an impartial investigation will help to further the cause of free, equal and democratic education which is the foundation of our national life.

• • •

Mrs. Shapiro's committee enlisted the assistance of the New York University Research Center for Human Relations. The Center guided the research and presented a report which is the foundation for the one that follows. Staff members of the Center who participated were Marie Jahoda, Stuart W. Cook, Isidor Chein, Richard Maisel and June Christ. The members of Mrs. Shapiro's committee and volunteers whom the committee enlisted collected the data which were necessary for the investigation.

In all of their contacts with members of the staff of the New York Public School System, the researchers were met with a fine spirit of co-operation. Superintendent Jansen instructed his staff to provide all necessary information and to assist wherever possible in the collection of necessary data. Teachers and school administrators demonstrated an awareness of the problem being studied and exhibited a sincere interest in the welfare and the education of Negro and Puerto Rican children in their schools.

The study staff is grateful for the assistance of volunteers without whose help much of the data could not have been collected.

The Fund for the Republic financed a portion of the cost of the study and the Public Education Association financed the remaining portion.

Purpose and procedure

The study examined the relative position, with respect to educational opportunities received, of Negro and Puerto Rican schools in the New York school system, and investigated the status of Negro and Puerto Rican integration into the schools. It conducted its investigations with respect to these questions under the following heads:

The Issue of Equal Educational Opportunity

The Issue of Zoning.

The PEA report presents the findings of the New York University Research Center for Human Relations' study as interpreted and augmented by the PEA Committee on Equality in Education.

The report drew upon the following sources for data:

1. Data furnished by principals and assistant superintendents
2. Data available in Board of Education reports and files
3. United States census reports
4. Reports of observations made by PEA committee and volunteers.

The report is organized under four sections:

1. Introduction
2. The Issue of Equal Educational Opportunity
3. The Issue of Zoning
4. The Data.

The Introduction has just been presented. Sections 2 and 3 present observations made from the data collected. Each observation is followed by a recommendation for action. The final section entitled "The Data" contains tables of data which substantiate the observations.

2. *The Issue of Equal Educational Opportunity*

The controversy

The question of whether Negro and Puerto Rican children are given an equal opportunity with other children in New York's public schools has been raised. The question seldom applies to individual Negroes and Puerto Ricans in a given school but suggests that, where they are concentrated in certain schools, the educational opportunities offered by these are not equal to those offered by other schools. This report essays to answer this question by comparing Negro and Puerto Rican schools with schools enrolling children of other ethnic origins.

Schools selected for comparison

New York City's public elementary and junior high schools are neighborhood schools. This means that children within a given com-

munity area of the city attend the school in that area. If the community population composition is of one ethnic origin, the schools of that community will reflect this condition in their school populations.

The report was interested in comparing two kinds of schools: schools composed primarily of continental white children and schools populated essentially by Negro and Puerto Rican children. It defines these schools as follows:

A continental white school is either an elementary or a junior high school in which the Negro and Puerto Rican school population is less than 10% of the total. For convenience we shall refer to such a school as a Group Y school.

A Negro and Puerto Rican elementary school is one in which the Negro and Puerto Rican population is 90% or more of the total school population. *A Negro and Puerto Rican junior high school* is one in which the Negro and Puerto Rican population is 85% or more of the total school population. We shall include both such schools in the category Group X schools.

All of the Group X schools (42 elementary and 9 junior high schools) were included in the study. A sample of 60 elementary schools was selected at random from the Group Y schools for the purpose of making comparisons. All of the Group Y junior high schools (15) were used for this purpose.

This report attempts to answer these questions with respect to the relative positions educationally of these two groups of schools:

1. Are the physical facilities available to Group X as good or equal to those provided Group Y children?
2. Are Group X schools maintained as well as Group Y schools?
3. Are teachers in Group X schools as competent as those in Group Y schools?
4. Are Group X schools served as well by the special school services as Group Y schools and are these services adequate according to their needs?
5. Are the per pupil expenditures in Group X schools the same as those in Group Y schools?
6. Is the average pupil achievement in Group X schools the same as Group Y schools?
7. Are the class sizes in Group X schools the same as those in Group Y schools?

The questions are answered in the order given above.

QUESTION

1. Are the physical facilities available to Group X as good or equal to those provided Group Y children?

ANSWER

1. *On the average, facilities in Group X schools are older and less adequate than those in Group Y schools.*

1.1—Group X school buildings are older than Group Y buildings. The average age of Group X elementary schools is 43 years while the average age of Group Y elementary schools is 31 years. The average age of Group X junior high schools is 35 years, while the average age of Group Y junior high schools is 15 years. (See Table 3.)

1.2—There is less square feet of floor space, site space, ground level space and playground space per child in Group X elementary schools than in Group Y elementary schools. The same is true for the junior high schools with the exception that the square feet of floor space per child is more for Group X schools at this educational level. (See Table 4.)

1.3—Despite these facts Group X schools are, on the average, larger (70,909 square feet) than Group Y schools (58,429 square feet).

1.4—In general, Group X schools are equipped with fewer special rooms than Group Y schools. (See Table 5.)

1.5—A questionnaire answered by the principals indicated that principals of Group X schools are less satisfied with the adequacy of their school's facilities than principals in Group Y schools. (See Table 6.) Fewer of them feel that their facilities are adequate and more of them indicate the need for "more" or "many more" facilities. (See Table 7.)

1.6—In general, principals in Group X schools are less satisfied with the teaching equipment available to them than are principals in Group Y schools. (See Table 8.)

QUESTION

2. Are Group X schools maintained as well as Group Y schools?

ANSWER

2. *On the average, Group X schools are not as well maintained as Group Y schools.*

2.1—Group X schools are older than Group Y schools but renovations and painting of school buildings have nonetheless not always compensated for this disadvantage. In elementary schools, an average of 9.8 years have gone by without renovation of Group Y schools; the average for Group X schools is 17.2 years. In junior high schools, it is .7 years on the average since the latest renovation of Group Y schools, while the figure for Group X schools is 4.3 years. Some schools visited were in very poor condition and were in need of complete renovation and possibly even reconstruction before they could be called satisfactory.

Observations and recommendations

Negroes and Puerto Ricans, in general, inhabit the older, well-established areas in the city, hence their children will be housed in the older schools. It must also be recognized that the need for new buildings is very great and that this need at present outweighs the need for replacement of older buildings. The surveyors, however, visited some buildings that were so antiquated that the condition of the building worked to the disadvantage of the educational efforts being made in it. It is felt that the schools of New York are rapidly reaching a stage when replacement of school buildings has become a serious problem. This is not a justification for poor maintenance of buildings, however.

QUESTION

3. Are teachers in Group X schools as competent as those in Group Y schools?

ANSWER

3. *If tenure, probationary and substitute status are measures of competency, Group X school teachers are not as competent as Group Y teachers because fewer of them are on tenure and more of them have probationary or substitute status. Also teacher turnover is more rapid in Group X schools than in Group Y schools.* (See Tables 9, 10, 11.)

Observations and recommendations

An unfortunate condition persists because teachers elect to teach in Group Y schools in preference to Group X schools: some Group X schools are listed as difficult schools, and teachers avoid these; Group Y schools are closer to teachers' homes; and a tradition has developed which seems to attach prestige to teaching in Group Y schools in preference to Group X schools. This report hesitates to recommend that personnel practices be modified to make transfers out of Group X schools more difficult but everything else should be tried to encourage experienced teachers to remain in Group X schools. Perhaps an increase in salary or such fringe benefits as lowered pupil-teacher load, better facilities, etc., might become inducements. It is suggested that the Board of Education re-examine all of its personnel practices to see what could be done to keep experienced teachers in Group X schools.

QUESTION

4. Are Group X schools served as well by the special school services as Group Y schools and are these services adequate to their needs?

ANSWER

4. *Quantitatively (in terms of number of visits by service personnel) Group X schools receive more services than Group Y schools. They have more special classes.* (See Table 12.)

4.1—The Board of Education provides classes for both gifted (IGC classes) and mentally retarded children (CRMD classes). Group X schools have more CRMD classes than Group Y schools. Group X schools, however, have fewer IGC classes. (See Table 13.) (The Board of Education is not establishing any more IGC classes pending a study of them.)

4.2—There are more special classes in Group X schools and their average size is smaller than those in Group Y schools. (See Table 14.)

Observations and recommendations

Based upon answers to the question "Have you had a visit from special service personnel this year?", Group X schools have had more service than Group Y schools. The need for special services in Group X schools is very great. The satisfaction of this need cannot be measured in terms of visits but in time spent. If the Board of Education wishes to satisfy the needs of Group X schools for special services, there will have to be significant expansion in these.

QUESTION

5. Are the per pupil expenditures in Group X schools the same as those in Group Y schools?

ANSWER

5. *There is no great discrepancy between the per pupil instructional and administrative cost in Y schools and X schools. In the maintenance category of the budget, Group Y elementary schools are favored over Group X schools but the reverse is true at the junior high level.*

5.1—It was not possible to obtain any significant figures relative to *capital outlay* per pupil. These vary greatly from year to year.

(*Capital Outlay:* The investment in school sites, the erection of new buildings, the installation of mechanical equipment, the purchase of furniture and equipment for new buildings, improvements for betterment of existing structures and equipment.)

5.2—The *maintenance of plant* costs per pupil in 1953-1954 was more for Group Y elementary schools than Group X elementary schools. At the junior high level, however, the maintenance of plant costs per pupil in Group X schools was higher than that in Group Y schools. (See Table 15.)

(*Maintenance of Plant*: Repairs and replacements to buildings and mechanical equipment; to furniture and instructional equipment, in order to maintain the system in a state of efficiency.)

5.3—The *operation of school plant* costs per pupil is less in Group X elementary schools than in Group Y elementary schools. At the junior

high level, however, the operation of school plant costs per pupil is more in Group X schools than in Group Y schools. (See Table 16.)

(*Operation of School Plant:* Custodial service, fuel, water, lighting and power, fuel inspection and other expenses of operation.)

5.4—The *cost of instruction* per pupil was substantially the same for Group X schools as for Group Y schools at both the elementary and the junior high school levels.

Although the *Annual Financial and Statistical Report* of the Board of Education gives school-by-school records of physical facilities and of expenditures for capital outlay, plant operation, and maintenance, no individual school accounts are kept for cost of instruction.

The Board of Education reports instructional costs of various programs only on a citywide basis and does not compile school-by-school figures. Nevertheless, the Superintendent of Schools made available for inclusion in this report the total annual cost of salaries and supplies for each of the schools studied as a basis for estimating the per pupil cost of operating the educational program.

The cost for Group X elementary schools ranged from $133 to $241, with an average of $185. In Group Y schools, the range was wider, from $129 to $245, and the average was $195.

At the junior high school level the slight difference was in favor of Group X schools. The range for these schools was from $230 to $320, and the average was $252. Group Y Junior high schools ranged from $204 to $272, with an average of $244.

No effort was made to allocate expenditures by the Division of Child Welfare (i.e., Bureau of Child Guidance, Bureau of Attendance, etc.) or by other city departments, such as the Department of Health (for school nurses, medical, and dental examinations) on behalf of children in these schools. (See p. 8 for evidence that Group X schools receive more of some types of special services than do Group Y schools.)

Two factors are particularly relevant to the interpretation of these estimates of cost of instruction per pupil. One, which is discussed under Question No. 3 (p. 8), is the condition of the staff with regard to turnover, tenure, probationary and substitute status. The other is the ratio of the number of pupils to the number of professional positions. On account of the larger number of special classes, this ratio is consistently in favor of the Group X schools. At the elementary level the average for Group X schools is 25.8 pupils per professional position, and 28.7 for Group Y. The differential is even greater at the junior high school level where the average for Group X is 19.4 and for Group Y, 22.7.

(*Cost of Instruction*: The salaries of teachers and principals and other professional staff members; expenditure for instructional supplies, books,

and equipment; personal service cost of after-school centers and evening community centers.)

5.5—The educational administration cost per pupil was not computed.

(*Educational Administration:* General and specific professional control of the educational side of the school system. The bureaus directly connected with instructional and extension activities. Office staffs.)

Observations and recommendations

The difference in maintenance of plant and operation of plant costs at the elementary level seems to substantiate what was suggested earlier in this discussion, that more money should be spent keeping Group X buildings in condition.

QUESTION

6. Is the average per pupil achievement in Group X schools the same as in Group Y schools?

ANSWER

6. *In terms of standardized tests in reading and arithmetic (in certain specified grades) it is not.* (See Tables 18 and 19.) It must be remembered, however, that a school strives to satisfy the educational needs of children in other areas of the curriculum as well as in reading and arithmetic. The investigation has no data to show how effective the schools were in developing better citizens, developing racial and religious understanding, improving hygiene and health, and in fostering moral values. No test results in English, the Social Studies, and Science were available for study.

To judge the success of teaching on reading and arithmetic tests alone is unfair. On the other hand, such judgments have been made and the accusations implied in them must be answered. The school system has replied by suggesting that children in Group X schools do not test as high in general ability tests as children in Group Y schools and that the teachers have done as well as, or better than, might be expected. This does not close the argument, however, for many experts insist that the tests of general ability merely reflect what has been learned and that children weak in reading, in language, in awareness of the American culture or in bookish learning will do poorly in a test of general ability. The very fact that a child does not do well in a general ability test might in itself be a symptom of instructional weakness.

Observations and recommendations

The question as to what is really being tested cannot be answered with unanimous agreement about the answer. The issue of what tests of

general ability measure is an important one to resolve. The New York City schools are making efforts in this area. It is suggested that they carry on in these efforts and expand them. PEA would be pleased to collaborate with the Board of Education in approaching a foundation for funds to carry on experimentation concerning the significance of achievement tests and general ability tests in cities of highly heterogeneous population.

QUESTION

7. Are the class sizes in Group X schools the same as those in Group Y schools?

ANSWER

7. *If special classes (CRMD and IGC) are included, the class sizes in Group X schools are somewhat smaller than those in Group Y schools. If special classes are not included in the statistics, the average class size of Group X schools is larger than that of Group Y schools.*

7.1—The Board of Education sets an optimum class size of 32.4 for typical schools and 28 for difficult schools. (90% of the Group X schools are in the "difficult" category.) It also limits the size of special classes. Inclusion of these categories will naturally lower the overall average class size.

7.2—The average class size of Group X elementary and junior high schools is 30.0 pupils; of Group Y elementary schools 31.7 and Group Y junior high schools 32.9 special classes included.

7.3—If the difficult schools are separated from the typical schools, at the elementary level, the average size of classes in difficult Group X schools is 34.2, in difficult Group Y schools 29.5. In typical schools for Group X it is 35.1 and for Group Y 31.1 (special classes not included in these figures).

Observations and recommendations

Educational research has not come up with much information concerning what a difference of a few students in class size means in terms of educational productiveness. It is generally agreed that problems of classroom control increase with class size and that students cannot receive the proper personal attention of a teacher when the class is large. It would seem that in the so-called "difficult" schools class sizes should be further reduced since it is almost universally agreed that class sizes beyond 25 are not desirable even in typical school situations. The Board of Education has made provision for reducing class sizes in this year's budget.

Reliability and meaning of the data

The facts just presented are based upon averages. Averages as measures of central tendencies do not portray the exceptions. There are Group X schools above the average of Group Y schools and Group Y schools

below the average of Group X schools. Consider for example the Group X school described below.

The economic status of the children is low as indicated by the fact that 16% of them receive free lunch. The principal, who has been in the school for many years, estimates that 30% of the school community's families have an income of less than $2,000 per annum, 60% between $2,000 and $4,800 and only 10% over $4,800.

The school was built in 1929 (average Group X date is 1912); it is larger and roomier than the average Group X school. There are 62.3 square feet of floor space per child (Group X average, 59 square feet), 218.0 square feet of site (Group X average 46.3 square feet), 21.4 square feet of ground floor space (Group X average 17.4 square feet), and 14.9 square feet of outdoor playground (Group X average 2.2 square feet). The building has not been renovated since 1943 (Group X average 1937.8) but renovation is to be accomplished this year.

The school is relatively small with an enrollment of 560 children and a capacity of 648. Its utilization index is 87 (Group X average 108.9). The average class size (excluding one CRMD class of 13 children) is 35.3 (Group X average 35.1).

The principal considers most of the facilities adequate. Even though the school has no gymnasium or lunchroom, the basement has satisfactorily served the functions performed by these. There is no central library.

The financial outlay per child is not consistently higher than the average for Group X schools. Operational costs, however, were $31.4 (Group X average $19.2) per child.

Educational achievement measured by traditional standards are high: third grade children have a reading test score of 3.25, and the sixth grade scores 5.8 (Group X averages are 2.5 and 4.7 respectively). In arithmetic the sixth grade scores 5.5 (Group X average 4.8).

Although conclusions from one case are not very reliable, this school demonstrates what can be done. It might also be suggestive of the relationship that exists between facilities and achievement.

Need for high school study

This report does not cover the high schools, for staff limitations, money and time did not permit. Outside agencies have given the committee information which suggests that such a study be undertaken by the Commission on Integration of the Board of Education.

3. *Zoning Practices*

The controversy

In addition to the questions concerned with equality of education for Negroes and Puerto Ricans, there have been questions raised about the

zoning practices of the Board of Education. Is there segregation? Do the zoning practices favor separation of Negro and Puerto Rican groups in the schools? This section proposes answers to these questions.

The question of segregation

Of the city's 639 elementary schools, 445 or 71% enroll 90% or more Negro and Puerto Rican children or 90% or more children of other ethnic origins. This is a state of affairs which we all should deplore although it cannot be placed at the doorstep of the Board of Education. Many conditions conspire to promote such a separation of children in schools but in the strictly legal sense of the word there is no such thing as segregation in the school system of New York City. Segregation in legal terminology implies legislative discrimination against a minority group. There is nothing in the law or in the rules and stated policies of the Board of Education of New York City to indicate that there is segregation of children into separate schools.

The question of school district boundaries

We have already noted that New York City schools are neighborhood schools and that the school population, therefore, reflects the ethnic composition of the school district. As long as the principle of neighborhood schools persists, in the central areas of homogeneous ethnic communities it is immaterial, from the point of composition of the school, where school district boundary lines are drawn. A school in the center of Harlem will be a Negro school.

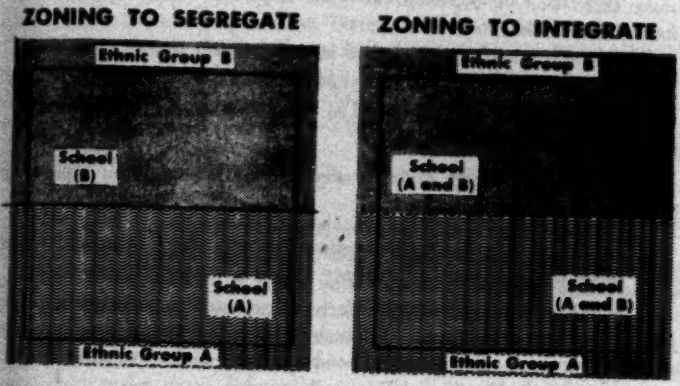
On the other hand, in fringe areas where groups of different ethnic composition meet geographically, the individual responsible for zoning school districts is faced with these three alternatives:

1. He may select boundaries which promote ethnic separation.
2. He may ignore the ethnic composition problem.
3. He may select boundaries which encourage integration of ethnic groups. (See Figure 1.)

A device that may be used to foster ethnic separation through zoning, although it also has other more legitimate purposes, is the creation of what is known as a "permissive area" within the school district. A permissive area is a "no-man's land," residents within which are permitted a choice of schools for their children. (Usually the choice they will make is obvious because of ethnic group.) Children in a permissive area, if they are all of one ethnic extraction, are placed in a position where they can choose a school of that extraction and thus avoid going to a nearer school of different ethnic composition. Figure 2 on the following page demonstrates how the permissive area may be employed to further the process of school segregation through zoning. What often makes the use of a permissive area questionable is that it can be designed to conceal the facts of ethnic separation by a deceit of zoning.

Figure 1

Types of Fringe Area Zoning

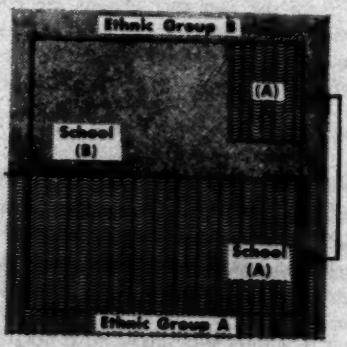


Ethnic Group A
Ethnic Group B
Boundary of School Districts

Note: (A) and (B) are the same geographical areas.

Figure 2

Use of Permissive Area to Foster Ethnic Segregation in Schools



The report endeavors to answer the following questions about the zoning practices in the New York City schools:

1. Are the schools being zoned in ways which further ethnic separation?
2. Are the schools being zoned in ways which ignore both the possibility of separation and integration?
3. Are the schools being zoned in ways which favor integration?

QUESTION

1. Are schools being zoned in ways which further ethnic separation?

ANSWER

1. *There is no significant evidence to indicate that ethnic separation is seriously considered in drawing school district boundary lines.*

1.1—There is considerable evidence which indicates that some parents will falsify addresses, employ political pressure, and deliberately confuse zoning issues in an effort to avoid sending their children to schools which are predominantly Negro and Puerto Rican.

1.2—The inquiry found no evidence which would indicate that school officials were creating permissive zones to separate children by ethnic groups. On the contrary, the researchers worked with one assistant superintendent who was in the process of eliminating such a permissive zone which did tend to separate Negroes and Puerto Ricans from children of other ethnic origins. The assistant superintendent called upon the parents to assist her and, contrary to what is commonly believed, parents from all the ethnic groups involved joined together to find a just and acceptable solution to the difficulties created by the existence of the permissive area.

Observations and recommendations

Many of the charges that the school system is separating children by ethnic groups arise from the fact that parents are circumventing school regulations. Every effort should be made to insist that children who belong in a given school go to that school. The permissive zone when established in fringe areas is always suspect. The creation of such zones should be avoided.

QUESTION

2. Are schools being zoned in ways which ignore both the possibility of separation and integration?

ANSWER

2. *In general the principles followed in zoning school districts ignore both the possibility of separation and integration of ethnic groups.*

In New York City the assistant superintendent of an administrative district zones the schools in that district. Interviews with assistant super-

intendents revealed that the following principles guide their zoning practices:

1. Schools are zoned so that the distances a child must walk are kept to a minimum. Transportation of children at school expense is avoided if possible.
2. Major traffic hazards are avoided, and topographical features, such as the steep hill at Morningside Heights, are considered.
3. School population size is balanced according to building capacities.
4. Changes in district boundaries are kept to a minimum.

The study does not in any way desire to minimize the difficulties encountered in zoning. It is not easy to balance zoning principles against each other, to consider dozens of other variables, and at the same time keep the public happy in the process of drawing school district lines. To suggest that these lines be drawn to consider the possibility for integration is to make more difficult that which is already too difficult. Yet as things stand, because of residential separation by ethnic groups, the principle of proximity to the school in school districting has resulted in a situation where in only 30% of the schools do appreciable numbers of Negro and Puerto Rican children contact continental white children.

Observations and recommendations

The surveyors are confident in their belief that the source of many of the charges of separation by ethnic groups leveled against school officials lies in the fact that information relative to school district lines is almost inaccessible. The central office should possess a map of school districts which is kept up to date and available to anyone who might wish to see it. Whenever matters of public interest are concealed, the public agency responsible is suspect. Since there is no possible reason for concealing school district information, it should be made public knowledge.

QUESTION

3. Are the schools being zoned in ways which favor integration?

ANSWER

3. *It is not overall school policy to encourage integration through zoning.*

As a matter of fact it is an issue which only social philosophy can answer whether the schools are morally bound to zone in ways to integrate ethnic groups or whether ethnic compositions should be ignored in the process of setting up school districts. Some superintendents argued with considerable justification that in order to integrate ethnic groups it is first necessary to identify them. They were reluctant to ask children questions about race and religion because the very asking of such questions is per se an act of segregation.

The reply to this argument is to point out that one of the major responsibilities of the schools is to teach intercultural and interracial understanding. What better way is there to accomplish this end than to provide an opportunity for children of various ethnic origins to live and work together in the schools?

Observations and recommendations

It is beyond the responsibility of this report to recommend a public policy with respect to integration of Negro and Puerto Rican children into the public schools of New York City. This is a matter for consideration by the Board of Education's Commission and for Board of Education policy decision. It suggests, however, that whenever a superintendent can further integration by drawing district lines he should so do. (See Figure 1.)

If two adjacent schools contain varying percents of Negro and Puerto Rican children, it may be possible under certain conditions to change district lines to equalize these percents. There are 258 pairs of elementary and junior high schools within the same districts which differ in the percent of Group Y children enrolled by 30% or more. These might well be studied by the Commission on Integration to see if redistricting is possible and if such redistricting would lead to better integration of these children. The Research Center made a number of studies of fringe area districts to see how this could be accomplished and its experience is available to the Board of Education should it desire it.

4. The Data

TABLE 1

Composition of the Population of Elementary and Junior High Schools in New York City at the Time of This Report

Percent of Negro and Puerto Rican Students	GRADE					Percent of Total
	Kg-6	Kg-8	Kg-9	7-9	Total	
91-100%	33	3	3	5	44	6.9
81-90	19	0	1	4	24	3.8
71-80	10	0	1	5	16	2.5
61-70	13	2	1	3	19	3.0
51-60	15	3	1	4	23	3.6
41-50	13	3	2	7	25	3.9
31-40	14	4	1	0	19	3.0
21-30	14	6	2	5	27	4.2
11-20	18	7	1	8	34	5.3
1-10	184	78	11	23	296	46.3
0	63	38	5	6	112	17.5
Total	396	114	29	70	639	100.0

TABLE 2

Types of Schools Studied

GROUP Y SCHOOLS

Other Ethnic Groups

Elementary Schools

Borough	District	
Bronx	19	P.S. 88
	21	P.S. 33, 57, 91
	22	P.S. 24
	23	P.S. 102, 105
Brooklyn	28	P.S. 131
	30	P.S. 34
	36	P.S. 105, 127, 160
	37	P.S. 112, 164, 204
	38	P.S. 177, 180, 186, 192, 200
	39	P.S. 212, 248
	41	P.S. 208, 221, 235, 244, 268
	44	P.S. 76, 224
Queens	45	P.S. 148
	46	P.S. 70, 80,* 84, 112, 166, 199
	47	P.S. 78, 139, 153, 175
	49	P.S. 3, 51, 53, 66, 100, 101, 114, 144, 196, 215
	50	P.S. 55, 57, 96, 161, 176
	51	P.S. 99, 186
	52	P.S. 31, 177, 188

Junior High Schools

Borough	District	
Brooklyn	36	J.H.S. 220, 259
	37	J.H.S. 223, 227
	38	J.H.S. 96
	39	J.H.S. 228
	40	J.H.S. 234, 240
	41	J.H.S. 285*
Queens	45	J.H.S. 145
	46	J.H.S. 10, 125
	47	J.H.S. 190*
	49	J.H.S. 198*
	52	J.H.S. 216*

GROUP X SCHOOLS

Negro and Puerto Rican

Elementary Schools

Borough	District	
Manhattan	9	P.S. 72, 107, 109
	10	P.S. 57, 102, 103, 108
	11	P.S. 10, 113, 157, 170, 184
	12	P.S. 24, 68, 89, 119, 133
	13	P.S. 5, 46, 90, 156,* 186, 194
Bronx	16	P.S. 124
	17	P.S. 23, 99
	19	P.S. 63
Brooklyn	26	P.S. 47, 78
	27	P.S. 41, 44
	32	P.S. 26, 28, 70, 83, 129
Queens	48	P.S. 92, 143
	50	P.S. 48, 116, 140, 160

Junior High Schools

Borough	District	
Manhattan	10	J.H.S. 120
	11	J.H.S. 81
	12	J.H.S. 139
	13	J.H.S. 136, 164
Bronx	16	J.H.S. 51
	17	J.H.S. 40
	19	J.H.S. 55
Brooklyn	42	J.H.S. 66

* J.H.S. 285 Brooklyn, 190, 198 and 216 Queens and P.S. 156 Manhattan, are new schools and data were not always available concerning them. P.S. 80 Queens is now an annex to P.S. 199.

Number of Schools Studied

Total Group Y (Other ethnic groups) Schools—60 elementary, 15 junior high.

Total Group X (Negro and Puerto Rican) Schools—42 elementary, 9 junior high.

TABLE 3

Construction Date of School Buildings

	Elementary Schools		Junior High Schools	
Construction Date	Group Y	Group X	Group Y	Group X
Before 1900	5%	32%	0%	0%
1900-1919	23%	29%	0%	56%
1920-1939	48%	22%	60%	33%
1940 or later	24%	17%	40%	11%
Mean date	1924	1912	1940	1920

TABLE 4

Space Available per Pupil

	Elementary Schools		Junior High Schools	
Surface Space	Group Y	Group X	Group Y	Group X
Floor space	88.9 sq. ft.	59.0 sq. ft.	75.4 sq. ft.	78.0 sq. ft.
Site space	103.1 sq. ft.	46.2 sq. ft.	62.4 sq. ft.	42.2 sq. ft.
Ground level space	26.9 sq. ft.	17.4 sq. ft.	24.3 sq. ft.	18.5 sq. ft.
Playground space	3.8 sq. ft.	2.2 sq. ft.	2.1 sq. ft.	1.3 sq. ft.

TABLE 5

Per Cent of Schools Having Particular Facilities and Special Rooms

	Elementary Schools		Junior High Schools	
Facility	Group Y	Group X	Group Y	Group X
Auditorium	83%	78%	100%	100%
Assembly room	68%	18%	—	—
Shower room(s)	48%	30%	77%	55%
Gymnasium	61%	68%	100%	89%
Correctional gymnasium	7%	0%	—	—
Roof playground	15%	15%	8%	11%
Library	68%	71%	100%	100%
Science room(s)	51%	36%	100%	100%
Domestic Science room(s)	—	—	100%	67%
Drawing room	—	—	100%	89%
Sewing room	—	—	92%	77%
Commercial room(s)	—	—	100%	100%
Dressmaking room(s)	—	—	38%	0%
Industrial room(s)	—	—	100%	100%

TABLE 6

Percentage of Principals Rating Various Facilities "Adequate"

	Elementary Schools		Junior High Schools	
Facility	Group Y	Group X	Group Y	Group X
Auditorium space	84.0%	63.1%	71.4%	88.9%
Classroom space	76.8%	38.4%	33.3%	11.1%
Classroom storage space	31.0%	27.5%	53.3%	11.1%
Classroom clothes closets	81.8%	47.5%	73.3%	55.6%
General storage space	47.4%	26.8%	60.0%	25.0%
Gymnasium space	72.0%	35.1%	48.9%	33.3%
Gymnasium equipment	78.9%	55.2%	69.2%	25.0%
Kitchen facilities	66.0%	28.2%	73.4%	33.3%
Library space	60.0%	52.7%	78.6%	100.0%
Library books	58.7%	46.0%	71.5%	66.7%
Library equipment	49.1%	38.2%	64.3%	66.7%

Lunchroom space	42.6%	20.0%	40.0%	11.1%
Office space	79.3%	57.9%	60.0%	44.5%
Office equipment	69.1%	52.6%	66.7%	33.3%
Teachers' room	58.9%	31.7%	57.1%	12.5%
Pupils' toilet	83.0%	54.0%	87.0%	89.0%
Teachers' toilet	81.0%	59.0%	73.0%	56.0%

TABLE 7

Principals' Average Satisfaction With Facilities

	Elementary Schools		Junior High Schools	
Degree of Satisfaction	Group Y	Group X	Group Y	Group X
Facilities adequate	64%	41%	61%	41%
More facilities needed	20%	22%	23%	32%
Many more facilities needed	16%	31%	16%	27%

TABLE 8

Principals' Satisfaction With Teaching Equipment

	Elementary Schools		Junior High Schools	
Degree of Satisfaction	Group Y	Group X	Group Y	Group X
Satisfied	54%	37%	66%	33%
Satisfied, with qualification	22%	20%	7%	11%
Not satisfied, with qualification	—	7%	—	—
Not satisfied	24%	36%	27%	56%

TABLE 9

Per Cent of Teachers on Tenure

	Elementary Schools		Junior High Schools	
Percent on Tenure Per School	Group Y	Group X	Group Y	Group X
Less than 50%	3.4%	53.7%	13.3%	55.5%
51%-80%	45.8%	41.4%	80.0%	44.5%
More than 80%	50.8%	4.9%	6.7%	0.0%

TABLE 10

Average Composition of Faculty

	Elementary Schools		Junior High Schools	
Status of Teachers	Group Y	Group X	Group Y	Group X
On tenure	78.2%	50.3%	62.0%	47.1%
On probation	13.5%	31.6%	13.1%	15.8%
Permanent substitutes	8.3%	18.1%	24.9%	37.1%

TABLE 11

Teacher Turnover

Elementary Schools

	Group Y		Group X	
	Last year	Current	Last year	Current
On tenure	80.3%	78.2%	57.1%	50.3%
On probation	11.0%	13.5%	27.3%	31.6%
Permanent substitutes	8.7%	8.3%	15.6%	18.1%
N (# of all teachers = 100%)	(1808)	(1687)	(2080)	(2099)

Junior High Schools

	Group Y		Group X	
	Last year	Current	Last year	Current
On tenure	70.0%	62.0%	54.3%	47.1%
On probation	8.6%	13.1%	14.2%	15.8%
Permanent substitutes	21.4%	24.9%	31.5%	37.1%
N (# of all teachers = 100%)	(979)	(1048)	(661)	(656)

TABLE 12

Special Services Granted Schools

Per Cent of Schools Having Service

	Elementary Schools		Junior High Schools	
Nature of Service	Group Y	Group X	Group Y	Group X
Social worker	40%	50%	23%	66%
Psychologist	67%	95%	71%	63%
Youth Board service	2%	42%	0%	67%

TABLE 13

IGC and CRMD Classes

Percent of Schools Having Special Classes

	Elementary Schools		Junior High Schools	
Type of Class	Group Y	Group X	Group Y	Group X
IGC classes	3.6%	2.4%	66.7%	0.0%
CRMD classes	17.0%	87.8%	60.0%	100.0%

TABLE 14

Average Number and Size of Special Classes

	Elementary Schools		Junior High Schools	
	Group Y	Group X	Group Y	Group X
Average number of special classes	2.1	6.2	7.8	15.0
Average size of special classes	22.1	18.7	24.8	23.5

TABLE 15

Maintenance Cost Per Child 1953-1954 (In dollars)

	Elementary Schools		Junior High Schools	
Repairs and Replacement to:	Group Y	Group X	Group Y	Group X
Buildings and structural equipment	6.5	4.6	3.5	4.6
Furniture and instructional equipment	1.8	.7	1.6	.9
Total	8.3	5.3	5.1	5.5

TABLE 16

Operation of School Plant Cost Per Pupil 1953-1954 (In dollars)

	Elementary Schools		Junior High Schools	
	Group Y	Group X	Group Y	Group X
Compensation of custodians, elevator operators, et al	22.9	15.7	20.0	22.5
Fuel, water, supplies and other expenses of operation	4.6	3.5	4.2	5.5
Total	27.5	19.2	24.2	28.0

TABLE 17

Average Number of Pupils Per Administrator

	Elementary Schools		Junior High Schools	
	Group Y	Group X	Group Y	Group X
Pupils per administrator	606.7	543.6	498.3	430.9

TABLE 18

Average Reading Test Scores

Grade and Test	Group Y Norms	Group X Norms
3rd grade-Metropolitan Achievement (Primary)	3.7	2.5
6th grade-Metropolitan Achievement (Intermediate)	6.9	4.7
8th grade-Metropolitan Achievement (Advanced)	8.4	6.0

TABLE 19

Average Arithmetic Test Scores

Grade and Test	Group Y Norms	Group X Norms
6th grade-Metropolitan Achievement (Intermediate)	6.4	4.8
8th grade-New York Arithmetic Computation (C)	8.7	6.0

Judgment of the District Court

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2419-71

NEW YORK STATE, on behalf of New York, Bronx and Kings Counties,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant,

N.A.A.C.P., NEW YORK CITY REGION OF NEW YORK STATE CONFERENCE OF BRANCHES, *et al.*,

Applicants for Intervention.

Before TAMM, Circuit Judge, JONES and GREEN, District Judges.*

ORDER

The Motion of N.A.A.C.P., New York City Region of New York State Conference of Branches, et al., to Alter the Judgment of the Court in this action, entered April 12, 1972, denying their Motion to Intervene as party defendants and granting plaintiff New York State's Motion for Summary Judgment, having come before the Court at this time; and having considered the memoranda, affidavits

* GREEN, District Judge, did not participate in this decision.

and exhibits submitted in support of the Motion to Alter Judgment, the Court enters the following Order pursuant to Local Rule 9(f), as amended January 1, 1972.

Wherefore, it is this 25th day of April, 1972.

ORDERED: That the Motion of N.A.A.C.P., et al., to Alter the Judgment of the Court in this action be and the same is hereby denied.

/s/ EDWARD ALLEN TAMM
Circuit Judge

/s/ WILLIAM B. JONES
District Judge

Notice of Appeal

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Civil Action No. 2419-71

NEW YORK STATE, on behalf of New York, Bronx, and Kings Counties,

Plaintiff,

—against—

UNITED STATES OF AMERICA,

Defendant,

N.A.A.C.P., etc., *et al.*,

Applicants for Intervention.

NOTICE OF APPEAL

TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the N.A.A.C.P., New York City Region of New York State Conference of Branches, Antonia Vega, Simon Levine, Samuel Wright, Waldaba Stewart and Thomas R. Fortune, applicants for intervention in the above mentioned action, hereby appeal to the Supreme Court of the United States from the final order entered in this action on April 13, 1972, denying applicants' application for intervention and granting a declaratory judgment in favor of the plaintiff and the final order entered in this action on April 25, 1972, denying applicants' motion to alter judgment.

This appeal is taken pursuant to 42 U.S.C. §1973b(a).

Notice of Appeal

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Order of the Supreme Court Postponing Jurisdiction, Entered November 6, 1972

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

November 6, 1972

Jack Greenberg, Esq.
10 Columbus Circle, Suite 2030
New York, N. Y. 10019

Re: *National Association for Advancement of Colored People* v. *New York*
No. 72-129

Dear Mr. Greenberg:

Confirming our telegram of today, the Court took the following action in the above case:

"In this case probable jurisdiction is postponed to the hearing of the case on the merits. Mr. Justice Marshall took no part in the consideration or decision of this matter."

Enclosed are memorandums describing the time requirements and procedures under the Rules.

The additional docketing fee of $50, Rule 52(a) is due and payable.

Very truly yours,

MICHAEL RODAK, JR., Clerk
By /s/ HELEN K. LOUGHRAN
(Mrs. Helen K. Loughran
Assistant Clerk

Enclosures

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-129

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, NEW YORK CITY REGION OF NEW YORK CONFERENCE OF BRANCHES, *et al.*,

Appellants,

v.

NEW YORK, on behalf of New York, Bronx, and Kings Counties,

Appellees.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, NEW YORK CITY REGION OF NEW YORK CONFERENCE OF BRANCHES, *et al.*,

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

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